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# TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1948.

No. 40

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OKLAHOMA TAX COMMISSION, PETITIONER,

vs.

THE TEXAS COMPANY

---

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF OKLAHOMA

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PETITION FOR CERTIORARI FILED MARCH 30, 1948.

CERTIORARI GRANTED APRIL 19, 1948.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 40

OKLAHOMA TAX COMMISSION, PETITIONER,

vs.

THE TEXAS COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF OKLAHOMA

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## EXHIBIT "A" TO PETITION

Form  
(Mact.)

UNITED STATES

CIT &amp; G.S. L.E. NO. 7169

DEPARTMENT OF THE INTERIOR

I-51-Ind-25094

OFFICE OF INDIAN AFFAIRS

## OIL AND GAS MINING LEASE—ALLOTTED INDIAN LANDS

APACHE

TRIBE, STATE OF

OKLAHOMA

THIS INDENTURE OF LEASE, made and entered into in quintuplicate this 12th day of

January, 19 38, by and between TSA-AN-SB-ZAH (BLANCHE ACHILTA), an adult born in 1886, heir of JAMES TOWHO, deceased grantee of TOW-HO (restricitive deed approved Nov. 3, 1926, under L-3 42609-1926, and heirship established under Probate 58288-1937),

of Apache, State of Oklahoma, allottee No. 839  
(roll No. \_\_\_\_\_), of the Apache Tribe of Indians, designated  
lessor, and QUINTIN LITTLE

of M4111, State of Oklahoma, herein designated as

## WITNESSETH

1. Lessor, in consideration of a cash bonus of \$ 500.00 paid to the Superintendent of the Indian Agency having jurisdiction, hereinafter called the superintendent, receipt of which is hereby acknowledged, and in consideration of rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and natural gas deposits in or under the following-

of M4111, State of Oklahoma, herein designated as

## WITNESSETH

1. Lessor, in consideration of a cash bonus of \$ 500.00 paid to the Superintendent of the Indian Agency having jurisdiction, hereinafter called the superintendent, receipt of which is hereby acknowledged, and in consideration of rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and natural gas deposits in or under the following-

described tracts of land situated in the county of Grady State of Oklahoma, and more particularly described as follows:

**The Southwest quarter (SW/4) of the Southwest quarter (SW/4) of Section thirty-five (35) in Township 21N (6) North of Range Twelve (12) East of the Indian Meridian.**

containing 40 acres more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph and telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment hereof for the term of 10 years from and after the approval hereof by the Secretary of the Interior and as much longer thereafter as oil and/or gas is produced in paying quantities from said land.

2. The term "oil and gas supervisor" as employed herein shall refer to such officer or officers as the Secretary of the Interior may designate to supervise all oil and gas operations on Indian lands. The term "superintendent" as used herein shall refer to the superintendent or other official in charge of the Indian Agency having jurisdiction over the lands leased.

3. In consideration of the foregoing, the parties hereby agree:

(a) Rent: To be paid to the lessee in cash or in kind, at the discretion of the Secretary of the Interior, with satisfactory security, or United States bonds, as may be required, and in accordance with the terms of this lease.

(b) Water: To be furnished to the lessee in accordance with the regulations of the Secretary of the Interior, with satisfactory security, or United States bonds, as may be required, and in accordance with the terms of this lease.



[fols. 1-2] [File endorsement omitted]

**IN THE SUPREME COURT OF OKLAHOMA**

No. 32270

**THE TEXAS COMPANY, a Corporation, Plaintiff in Error,**

**v.**

**OKLAHOMA TAX COMMISSION, Defendant in Error**

**PETITION IN ERROR—Filed July 19, 1945**

The said, The Texas Company, plaintiff in error, complains of the said Oklahoma Tax Commission, defendant in error, for that the said defendant in error at the January, 1945, term of the District Court of Oklahoma County, State of Oklahoma, and, namely, on the 25th day of January, 1945, recovered a judgment by the consideration of said District Court (hereinafter referred to as the trial court) against said The Texas Company, plaintiff in error, in a certain action then pending in said trial court wherein said The Texas Company was plaintiff and said Oklahoma Tax Commission was defendant. The original casemade, duly signed, attested and filed, and which is also a certified transcript [fol. 3] of the record of said case in said trial court, is hereto attached, marked "Exhibit A" for identification and made a part of this Petition in Error. Said The Texas Company, plaintiff in error, avers that there is error in said record and proceedings in this, to-wit:

1. Said trial court erred in sustaining the demurrer of the defendant in error to the petition of the plaintiff in error and the amendment thereto filed in said case.

2. Said trial court erred in sustaining the demurrer of defendant in error to the First Cause of Action set out and contained in the plaintiff in error's petition and amendment to petition filed in said case.

3. Said trial court erred in sustaining the demurrer of defendant in error to the Second Cause of Action set out and contained in plaintiff in error's said petition and amendment to petition filed in said case.

4. Said trial court erred in dismissing the plaintiff in error's said petition and said amendment thereto and in rendering judgment in favor of the defendant in error and against plaintiff in error on said petition and the amendment thereto filed in said case.

5. Said trial court erred in dismissing the plaintiff in error's said petition and said amendment to petition, and in rendering judgment in favor of the defendant in error and [fol. 4] against plaintiff in error on the First Cause of Action set out and contained in said petition and amendment to petition filed in said case.

6. Said trial court erred in dismissing the plaintiff in error's said petition and said amendment to petition, and in rendering judgment in favor of the defendant in error and against the plaintiff in error on the Second Cause of Action set out and contained in said petition and amendment to petition filed in said case.

Wherefore, said plaintiff in error prays that said judgment so rendered be reversed, set aside and held for naught, and that judgment be rendered in favor of The Texas Company, Plaintiff in error, and against Oklahoma Tax Commission, defendant in error, overruling said demurrer of said defendant in error to said petition and amendment to petition and to said First and Second Causes of Action respectively; and that plaintiff in error be restored to all rights which it has lost by reason of the rendition of said judgment against it, and for such other relief as the court may deem just.

John R. Ramsey, B. W. Griffith, Ames, Monnet,  
Hayes & Brown, Attorneys for The Texas Company, Plaintiff in Error.

[fols. 5-6] [Caption omitted]

[fol. 7] IN THE DISTRICT COURT IN AND FOR OKLAHOMA  
COUNTY, STATE OF OKLAHOMA

No. 106796

THE TEXAS COMPANY, a Corporation, Plaintiff,

vs.

OKLAHOMA TAX COMMISSION, Defendant

PETITION—Filed November 30, 1942

Comes now the Texas Company, a corporation, and for its causes of action against the defendant, Oklahoma Tax Commission, alleges and states:

FIRST CAUSE OF ACTION

1. That it is now, and was during the months of September, October and November, 1942, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and duly authorized and licensed to do business and doing business in the State of Oklahoma.

2. That it is now, and was during all of such time the owner and holder of good, valid and subsisting oil and gas mining leases and the leasehold estates thereby evidenced and created, covering respectively the following described lands, all located in Caddo County, State of Oklahoma, which lands will be described in connection with the said leases and leasehold estates so covering them, that it to say:

[fol. 8] (a) An oil and gas mining lease dated January 12, 1938 wherein Tsa-ah-se-zah (Blanche Achilta) is lessor and Quintin Little is lessee, covering the Southwest Quarter of the Southwest Quarter of Section 35, in Township 6 North of Range 12 West of the Indian Meridian, and which lease was duly approved by the Secretary of the Interior of the United States of America on February 15, 1938, and which lease was duly filed for record on the 1st day of August, 1938, in the office of the County Clerk of Caddo County, Oklahoma, and recorded in Book 79 at page 465 of Misc. records of said office. A true and correct photostat copy of said lease is hereto attached, marked "Exhibit A" for



identification and by reference made a part hereof the same as if fully copied herein. The said land covered by said lease will be hereinafter referred to as "said Tract One".

• (b) An oil and gas mining lease dated January 23, 1937, wherein Oliver Maynabonah and also W. B. McCown, Superintendent for the Kiowa Indian Agency, for and on behalf of Kosope Maynabonah, a minor, are lessors, and Clyde M. Becker is lessee covering Lots 1 and 2 and the South Half of the Northeast Quarter of Section 2 in Township 5 North of Range 12 West of the Indian Meridian, and which lease was approved by the Secretary of the Interior of the United States of America on March 25, 1937, and which lease was filed for record in the office of said County Clerk on August [fol. 9] 1, 1938, and recorded in Book 79 of Misc. at page 419 of the records of said office. A true and correct photostat copy of said lease is hereto attached, marked "Exhibit B" for identification and by reference made a part hereof. The lands covered by said lease will be hereinafter referred to as "said Tract Two."

(c) An oil and gas mining lease dated January 22, 1937, wherein Julia Mulkehay, Chale-tsin and Ellen Mulkehay, adults, and also W. B. McCown, Superintendent of the Kiowa Indian Agency, for and on behalf of Philip Tooisgah, then a minor, are lessors, and wherein Clyde M. Becker is lessee, which lease was approved on April 14, 1937, by the Secretary of the Interior of the United States of America, and which lease was filed for record on August 1, 1938, in the Office of said County Clerk, and recorded in Book 79 of Misc. records at page 395, of the records of said office. A true and correct photostat copy of which said lease is hereby attached, marked "Exhibit C" for identification and by reference made a part hereof. The land covered by this lease will be hereinafter referred to as "said Tract Three".

3. That by virtue of mesne assignments, duly approved by the Secretary of the Interior of the United States of America, the said oil and gas mining leases, and leasehold [fol. 10] estates thereby created and evidenced, have become owned and are owned by this plaintiff, and were so owned during the months of September, October and November, 1942. That the plaintiff has complied with the terms and provisions of said leases, and that the same are in full force and effect according to their terms.

4. That the said lands covered by the said several leases constituted portions of the Tribal lands of the Kiowa and Apache Indian Tribes, or of the particular Indians of said Tribes for whom the United States Government held said respective lands in trust. That at the respective times of the making and execution of the said several leases the said lands included in said respective leases were owned by the said respective lessors by or on whose behalf, as lessors, the said leases were respectively executed, which ownership, however, was subject to the supervision and control of the United States Government.

5. That the ownership of said lessors by or on whose behalf said leases were executed, in and to said respective lands was acquired under and by virtue of the provisions of the General Allotment Act of the United States of America, being an Act of Congress approved February 8, 1887, (Chapter 119, 24 Stat. 388) and of later Acts of Congress amendatory thereof. That at the times of the execution of said several leases, the several tracts of land remained under the supervision and control of the United States of America, [fol. 11] and the said leases were executed pursuant to the provisions of said General Allotment Act, and of said Acts amendatory thereof, and of the Act of Congress of March 3, 1909, (35 Stat. 781, 783). That at the time of the execution of said several leases the said lessors by or on behalf of whom said leases were executed had no power or authority to make and enter into said several leases save and except pursuant to the supervision and control of the United States Government under and by virtue of the Acts of Congress referred to above.

6. That during the said months of September, October and November, 1942, the said lands covered by said several leases remained subject to the supervision and control of the Government of the United States of America; and said leases and leasehold estates remained subject to said supervision and control, except that prior to said time the said supervision and control has been relinquished and released, as to a 7/16ths interest insofar as affected the said lands described as said Tract Three, and that as to said lands described under said Tract Three the supervision and control of said Government remained only as to a 9/16 interest.

7. That during the said months of September and October, 1942, the plaintiff as the lessee under said leases produced certain crude oil from said lands covered by said respective leases. That because of all the foregoing, said plaintiff in the operation of said leases and in the production of oil therefrom was and is a Federal instrumentality and agency, or an instrumentality and agency of said United States Government, and that said respective leases were and are instrumentalities of said United States Government:

8. That notwithstanding the above, the defendant asserts that the plaintiff is liable to pay to the Oklahoma Tax Commission gross production tax equal to five per centum of the gross value of the production of the 7/8ths working interest on all such oil produced by it from said respective leasehold estates pursuant to Section 1 of Article 4 of Chapter 66 of the Oklahoma Session Laws of 1935 (pages 271-273), being Section 821 of Title 68 of the Oklahoma Statutes of 1941, and further claims that the plaintiff is liable for the payment of a tax to said Oklahoma Tax Commission on the 7/8ths working interest of all oil so produced by it from said several leases, said tax being in the amount of 1/8th of one cent per barrel on each and every barrel of oil so produced by the plaintiff, the same being an excise tax on oil, commonly called "pro ration taxes" under and by virtue of provisions of Section 1, of Chapter 26, Title 68, of the Oklahoma Session Laws of 1941, (pages 380-381), being Section 1218-1 of Title 68 of the Oklahoma Statutes of 1941.

9. That the said plaintiff was not and is not liable for the payment of said gross production taxes or of said excise or pro ration taxes as to any oil produced by it from said lands covered by said leases, except as to the 7/16ths interest in [fol. 13] the 7/8ths working interest of oil produced from said Tract Three, hereinafter set forth, for the reason that the said oil was so produced by this plaintiff acting as a Federal instrumentality and agency as above set forth, and that accordingly the said taxing statutes of the State of Oklahoma were and are not applicable thereto.

10. That if it be held that the said taxing statutes of the State of Oklahoma are applicable to said oil so produced by the plaintiff from said lands, and that under and pursuant to said taxing statutes such gross production taxes and such

excise or pro ration taxes are levied on account of such oil so produced therefrom by the plaintiff, then that such taxing statutes, and each of them, were and are illegal, void, and of no effect for the reason that they impose a burden and restriction upon an agency and instrumentality of the said United States Government, and interfere with the performance by this plaintiff of its duties and functions as an instrumentality and agency of said Government of the United States of America. Plaintiff further says that in so imposing a burden, restriction or limitation upon an instrumentality and agency of said Federal Government, the imposition of such taxes infringe upon an attempt to restrict and burden the exercise of said Government's sovereign powers, namely, its plenary powers in the administration and conduct of the properties and affairs of its Indian wards, and that as such, the same is violative of the Constitution of the United States of America.

[fol. 14] 11. That insofar as said taxing statutes of the State of Oklahoma are held to impose taxes upon the oil so produced by this plaintiff from said lands, such statutes, and each of them, are illegal and void for the reason that they are repugnant to the Constitution of the United States of America, and also that they are repugnant to the Acts of Congress above referred to.

12. That by reason of the said Acts of Congress referred to above, and by reason of the Constitution of the United States of America, this plaintiff has a right, privilege or immunity, namely, that it be not subjected to taxes or to any liability for taxes on account of any oil so produced by it from said lands covered by said several leases, save and except only the 7/16ths interest in said Tract Three as to which the supervision and control of the United States Government has been relinquished as aforesaid.

13. That on the 30th day of October, 1942, in order to avoid heavy penalties being claimed and asserted by the defendant against the plaintiff, this plaintiff paid to the defendant on account of oil produced by it during the month of September, 1942, gross production taxes in the amount of Four Hundred Ninety-Two Dollars and Thirty-Three cents (\$492.33), and excise or pro ration taxes in the amount of Ten Dollars and One Cent (\$10.01) on 80005.32 barrels of oil (Being the 7/8th working interest), produced



7. Removal of buildings, improvements, and equipment.—Lessee shall be the owner of and shall have the right to remove from the leased premises, within 90 days after termination of this lease, any and all buildings, structures, casing, material, and/or equipment placed thereon for the purpose of development and operation hereunder, save and except casing in wells and other material, equipment, and structures necessary for the continued operation of wells producing or capable of being produced in paying quantities as determined by the Secretary of the Interior, on said leased land at the time of surrender of this lease or termination thereof; and except as otherwise provided herein, all casing in wells, material, structures, and equipment shall be and become the property of the lessor.

8. Relinquishment of supervision by the Secretary of the Interior.—Should the Secretary of the Interior, at any time during the life of this instrument, relinquish supervision as to all or part of the acreage covered hereby, such relinquishment shall not bind lease until said Secretary shall have given 30 days written notice. Until said requirements are fulfilled, lessee shall continue to make all payments due hereunder as heretofore in section 3 (c). After notice of relinquishment has been received by lessee, as herein provided, this lease shall be subject to the following further conditions:

(a) All rentals and royalties thereafter accruing shall be paid in the following manner: Rentals and royalties shall be paid to lessor or his successors in title, or to a trustee appointed under the provisions of section 9 hereof. Rentals and royalties shall be paid directly to lessor or his successors in title, or to said trustee as the case may be.

(b) If, at the time supervision is relinquished by the Secretary of the Interior, lessee shall have made all payments then due hereunder, and shall have fully performed all obligations on its part to be performed up to the time of such relinquishment, then the bond given to secure the performance hereof, on file in the Indian Office, shall be of no further force or effect.

(c) Should such relinquishment affect only part of the acreage, then lessee may continue to drill and operate the land covered hereby as an entirety: *Provided*, That lessee shall pay in the manner prescribed by section 3 (c), for the benefit of lessor such proportion of all rentals and royalties due hereunder as the acreage retained under the supervision of the Secretary of the Interior bears to the entire acreage of the lease, the remainder of such rentals and royalties to be paid directly to lessor or his successors in title or said trustee as the case may be, as provided in subdivision (a) of this section.

9. Division of fee.—It is covenanted and agreed that should the fee of said land be divided into separate parcels, held by different owners, or should the rental or royalty interests hereunder be so divided in ownership, after the execution of this lease and after the Secretary of the Interior relinquishes supervision hereof, the obligations of lessee hereunder shall not be added to or changed in any manner whatsoever save as specifically provided by the terms of this lease. Notwithstanding such separate ownership, lessee may continue to drill and operate said premises as an entirety: *Provided*, That each separate owner shall receive such proportion of all rentals and royalties accruing after the vesting of his title as the acreage of the fee, or rental or royalty interest, bears to the entire acreage covered by the lease; or to the entire rental and royalty interest as the case may be: *Provided further*, That if, at any time after departmental supervision hereof is relinquished, in whole or in part, there shall be four or more parties entitled to rentals or royalties hereunder, whether said parties are so entitled by virtue of undivided interests or by virtue of ownership of separate parcels of the land covered hereby, lessee, at his election may withhold the payment of further rentals or royalties (except as to the portion due the Indian lessor while under restriction), until all of said parties shall agree upon and designate in writing and in a recordable instrument a trustee to receive all payments due hereunder on behalf of said parties and their respective successors in title. Payments to said trustee shall constitute lawful payments hereunder, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their respective successors in title.

10. Drilling and producing restrictions. It is covenanted and agreed that the Secretary of the Interior may impose restrictions as to time or times for the drilling of wells and as to the production from any well or wells drilled when in his judgment such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Indian lessor, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, or regulations by competent Federal or State authorities or lawful agreements among operators regulating either drilling or production, or both.

11. Unit operation. The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit devel-

risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their respective successors in title

10. Drilling and producing restrictions. It is covenanted and agreed that the Secretary of the Interior may impose restrictions as to time or times for the drilling of wells and as to the production from any well or wells drilled when in his judgment such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Indian lessor, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, or regulations by competent Federal or State authorities or lawful agreements among operators regulating either drilling or production, or both.

11. Unit operation. The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit development of the field or area, affecting the leased lands, or any pool thereof, if and when collectively adopted by a majority operating interest therein and approved by the Secretary of the Interior, during the period of supervision.

12. Helium public emergency.—It is covenanted and agreed that helium gas, carbon dioxide gas, and all other natural gases are included under the term "gas" as used in this lease, and in the event gas is discovered containing helium the United States Government shall have the right to purchase, at reasonable prices, all or any part of the production and to regulate the amount and manner of production; and in time of war or other public emergency, the United States Government shall have the option to purchase all or any part of the products produced under this lease.

13. Conservation.—The lessee in consideration of the rights herein granted agrees to abide by the provisions of any act of Congress, or any order or regulation prescribed pursuant thereto, relating to the conservation, production, or marketing of oil, gas, or other hydrocarbon substances.

14. Heirs and successors in interest.—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors of, or assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned

Two witnesses to execution by lessor

*[Signature]*

P O

*[Signature]*

P O

*Isa-ah-el-zah*  
*(Blanche Achita)* *mark*

2002  
28



[fol. 15] from its said oil and gas leasehold estate covering said Tract One, and paid gross production taxes in the amount of Four Hundred Ninety-one Dollars and Fifteen Cents (\$491.13), and excise or pro ration taxes in the amount of Nine Dollars and Ninety-two Cents (\$9.92), on 7938.31 barrels of oil (being the 7/8ths working interest) produced from its oil and gas leasehold estate covering said Tract Two, and paid gross production taxes in the amount of Nine Hundred Fourteen Dollars and Twenty-three Cents (\$914.23), and excise or pro ration taxes in the amount of Eighteen Dollars and Forty-three — (\$18.43) on 14744.92 barrels of oil (being 9/16ths of the 7/8ths working interest) produced from its oil and gas leasehold estate covering said Tract Three. That all of such payments were made to said Oklahoma Tax Commission, and were included in larger payments covering also other gross production taxes and excise or pro ration taxes for said month as to which no complaint is made herein.

14. That at the time of the payment of said gross production taxes and said excise or pro ration taxes for said month, this plaintiff served written notice on said defendant that it claimed that said taxes in the amounts specifically set out above were illegal and void upon the grounds and for the reasons set out in said written notice, and that it would bring a suit against said defendant to recover said void and illegal taxes. That a true and correct copy of said Notice of Intention to File Suit for Recovery of Illegal Taxes is [fol. 16] hereto attached, marked "Exhibit D" for identification, and by reference made a part hereof the same as if fully copied hereon.

15. That by reason of the foregoing, the defendant is indebted to the plaintiff, and the plaintiff is entitled to recover herein on account of this its First Cause of Action the total sum of Nineteen Hundred Thirty-six Dollars and Five Cents (\$1936.05), together with interest at the rate of three per cent (3%) per annum thereon from and after the 30th day of October, 1942; until paid.

#### Second Cause of Action

Said plaintiff for its Second Cause of Action against the defendant, Oklahoma Tax Commission, alleges and states:

16. That it adopts paragraphs numbered 1 to 12, both inclusive, of its preceding First Cause of Action, and each and every allegation in said paragraphs contained, as a part of this its Second Cause of Action, and by reference makes the same a part hereof, the same as if fully copied herein, and in addition thereto says:

17. That on the 27th day of November, 1942, in order to avoid heavy penalties being claimed and asserted by the defendant against the plaintiff, this plaintiff paid to the defendant on account of oil produced by it during the month of October, 1942, gross production taxes in the amount of Five Hundred Three Dollars and Eighty Cents (\$503.80), and excise or pro ration taxes in the amount of Ten Dollars [fol. 17] and Twenty-Four Cents (\$10.24), on 8191.89 barrels of oil (being the 7/8ths working interest) produced from its said oil and gas leasehold estate covering said Tract One, and paid gross production taxes in the amount of Five Hundred Fifteen Dollars and Three Cents (\$515.03), and excise or pro ration taxes in the amount of Ten Dollars and Thirty-Three Cents (\$10.33), on 8265.78 barrels of oil (being the 7/8ths working interest) produced from its oil and gas leasehold estate covering said Tract Two, and paid gross production taxes in the amount of Nine Hundred Thirty-Seven Dollars and Sixty-Six Cents (\$937.66), and excise or pro ration taxes in the amount of Eighteen Dollars and Eighty-One Cents (\$18.81), on 15047.91 barrels of oil (being 9/16ths of the 7/8ths working interest) produced from its oil and gas leasehold estate covering said Tract Three. That all of such payments were made to said Oklahoma Tax Commission and were included in larger payments covering also other gross production taxes and excise or pro ration taxes for said month as to which no complaint is made herein.

18. That at the time of the payment of said gross production taxes and said excise or pro ration taxes for said month this plaintiff served written notice on said defendant that it claimed that said taxes in the amounts specifically set out above were illegal and void upon the grounds and for the reasons set out in said written notice and that it would [fol. 18] bring a suit against said defendant to recover said void and illegal taxes. That a true and correct copy of said



4.B.

Two witnesses to execution by lease:

Edna Ayres  
P.O. Medall, Oklahoma  
Dorothy Keller

P.O. Maize, Oklahoma

State of Oklahoma

County of Adair

I, Frederick R. Nichols, a notary public, on this 15th day of January, 1939, personally appeared Edna Ayres (Blanche Ashita) to me known to be the identical person who executed the within and foregoing lease by thumbprint in my presence, and in the presence of Oliver Mayhew and Ussell Taylor, as witnesses,

and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

My commission expires June 30, 1940

Frederick R. Nichols  
Notary Public.

UNITED STATES  
DEPARTMENT OF THE INTERIOR

Washington, D. C., Feb 15 1939, 1939

APPROVED

UNITED STATES  
DEPARTMENT OF THE INTERIOR

Washington, D. C., Feb 15 1939, 1939

APPROVED

Clara L. Chapman  
Assistant Secretary of the Interior.

Filed for record this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ m.

Rental received, \$ \_\_\_\_\_

RETURN TO  
C. C. Victory,  
P.O. Box #2420,  
Tulsa, Oklahoma.

By \_\_\_\_\_

STATE OF OKLAHOMA, J.S.  
CASSIUS COUNTY

This instrument was filed for record on the \_\_\_\_\_ day  
of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
and duly recorded in book 79 Page 465 of

FILED

County Clerk  
By L. L. Stewart Deputy



Notice of Intention to File Suit for Recovery of Illegal Taxes is hereto attached, marked "Exhibit E" for identification and by reference made a part hereof the same as if fully copied herein.

19. That by reason of the foregoing the defendant is indebted to the plaintiff, and the plaintiff is entitled to recover herein an account of this its Second Cause of Action the total sum of Nineteen Hundred Ninety-Five Dollars and Eighty-Seven — (\$1995.87) together with interest at the rate of three per cent (3%) per annum thereon from and after the 27th day of November, 1942, until paid.

Wherefore, premises considered, plaintiff prays that it have judgment against the defendant, Oklahoma Tax Commission, herein in the sum of Nineteen Hundred Thirty-Six Dollars and Five Cents (\$1936.05) on account of its First Cause of Action, and in the further sum of Nineteen Hundred Ninety-Five Dollars and Eighty-Seven Cents (\$1995.87) on account of its Second Cause of Action, together with the costs of this suit, and that it have such other, further and general relief as it may be entitled to receive by law or in equity in the premises.

(Signed) John R. Ramsey, B. W. Griffith, Ames,  
Monnet, Hayes & Brown, Attorneys for Plaintiff,  
The Texas Company.



EXHIBIT "B" TO PETITION

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF INDIAN AFFAIRS

OIL AND GAS MINING LEASE ALLOTTED INDIAN LANDS

THIS INDENTURE OF LEASE, made this 23rd  
January 37, by and between CLYDE M. BEAVER, an adult, born  
in 1917; and B. B. CROWN, Supt. Iowa Indian Agency, for and on behalf of  
K. T. CROWN, a minor born in 1925, devisees of H. R. A. T. deceased  
(Heirship established under Probate No. 56511-1935),

of Anadarko, State of Oklahoma, allottee No. 540  
(roll No. ), of the Apache Tribe of Indians, designated herein as  
lessor, and CLYDE M. BEAVER

of Chickasha, State of Oklahoma, allottee No. 14314  
lessee:

WITNESSETH

1. Lessor, in consideration of a cash bonus of \$ 334.09 paid to the Superintendent of the Indian Agency having jurisdiction, hereinafter called the superintendent, receipt of which is hereby acknowledged, and in consideration of rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and natural gas deposits in or under the following

of Chickasha, State of Oklahoma, allottee No. 14314  
lessee:

WITNESSETH

1. Lessor, in consideration of a cash bonus of \$ 334.09 paid to the Superintendent of the Indian Agency having jurisdiction, hereinafter called the superintendent, receipt of which is hereby acknowledged, and in consideration of rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and natural gas deposits in or under the following

described tracts of land situated in the county of Caddo, State of Oklahoma, and more particularly described as follows:

Lots One and Two and the South half of the Northeast quarter of Section Two in Township Five North of Range Twelve West of the Indian Meridian,

containing 150.00 acres more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph and telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment hereof for the term of 10 years from and after the approval hereof by the Secretary of the Interior and as much longer thereafter as oil and/or gas is produced in paying quantities from said land.

2. The term "oil and gas supervisor" as employed herein shall refer to such officer or officers as the Secretary of the Interior may designate to supervise oil and gas operations on Indian lands. The term "superintendent" as used herein shall refer to the superintendent or other official in charge of the Indian Agency having jurisdiction over the lands leased.

3. In consideration of the foregoing, the lessee hereby agrees:

(a) Bond.—To furnish such bond as may be required by the regulations of the Secretary of the Interior, with satisfactory surety, or United States bonds as surety therefor, conditioned upon compliance with the terms of this lease.

(b) Wells.—(1) To drill and produce all wells necessary to offset or protect the leased land from drainage by wells on adjoining lands not the property of the lessee, or in lieu thereof, to compensate the lessor in full each month for the estimated loss of royalty through drainage; Provided, That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the oil and gas supervisor and payment in lieu of drilling and production shall be with the consent of, and in an amount determined by the Secretary of the Interior; (2) at the election of the lessee to drill and produce other wells; Provided, That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotment established and approved under applicable law or regulations, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; and (3) if the lessee elects not to drill and produce such other wells, for and posted the Secretary of the Interior, within 30 days after due notice in writing, either require the drilling and production of such wells in the manner and to the extent required by the Secretary of the Interior, or require the payment of a sum in addition to any rental or royalty payable, to be determined by the Secretary of the Interior, for the development and operation of such wells, or both, as the Secretary of the Interior may deem proper, to insure reasonable diligence in the development and operation of such wells, or both, as the Secretary of the Interior may deem proper, to insure reasonable diligence in the development and operation of such wells, or both, as the Secretary of the Interior may deem proper.



**Note:**

Following pages are difficult to reproduce, copy being illegible in parts. However, these exhibits have been shot at excellent reduction (10-1 or lower), with no attempt made to select out "illegible" copy.



(c) **Rental and royalty.**—To pay, beginning with the date of approval of the lease by the Secretary of the Interior, a rental of \$1.35 per acre per annum in advance during the continuance hereof, the rental so paid for any one year to be credited on the royalty for that year, together with a royalty of 12½ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased herein, save and except oil, and/or gas used by the lessee for development and operation purposes on said lease, which oil or gas shall be royalty free. During the period of supervision, "value" for the purposes hereof may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the oil and gas supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalty shall be due and payable monthly on the last day of the calendar month following the calendar month in which produced; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor. *Provided*, That the lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced: *And provided further*, That the lessee shall be in no manner responsible or held liable for loss or destruction of such oil in storage caused by acts of God. All rental and royalty payments, except as provided in sections 3 (e) and 4 (c) shall be made by check or draft drawn on a solvent bank, open for the transaction of business on the day the check or draft is issued, to the order of the superintendent. It is understood that in determining the value for royalty purposes of products, such as natural gasoline, that are derived from treatment of gas, a reasonable allowance for the cost of manufacture shall be made, such allowance to be two-thirds of the value of the marketable product unless otherwise determined by the Secretary of the Interior on application of the lessee or on his own initiative, and that royalty will be computed on the value of gas or casinghead gas, or on the products thereof (such as residue gas, natural gasoline, propane, butane, etc.), whichever is the greater.

(d) **Monthly statements.**—To furnish to the oil and gas supervisor monthly statements in detail in such form as may be prescribed by the Secretary of the Interior, showing the amount, quality, and value of all oil, gas, natural gasoline, or other hydrocarbon substances produced and saved during the preceding calendar month as a basis upon which to compute, for the superintendent, the royalty due the lessor. The leased premises and all wells, producing operations, improvements, machinery, and fixtures thereon and connected therewith and all books and accounts of the lessee shall be open at all times for the inspection of any duly authorized representative of the Secretary of the Interior.

(e) **Log of well.**—To keep a log in the form prescribed by the Secretary of the Interior of all the wells drilled by the lessee showing the strata and character of the formations passed through by the drill, which log or a copy thereof shall be furnished to the oil and gas supervisor.

(f) **Diligence, prevention of waste.**—To exercise reasonable diligence in drilling and operating wells for oil and gas on the lands covered hereby, while such products can be secured in paying quantities; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely all wells before abandoning the same and to effectually shut off all water from the oil or gas-bearing strata; not to drill any well within 200 feet of any house or barn now on the premises without the lessor's written consent approved by the superintendent; to carry out at the expense of the lessee all reasonable orders and requirements of the oil and gas supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; to bury all pipe lines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; to pay the lessor all damages to crops, buildings, and other improve-

productive operations, and to the health and safety of workmen and employees; to plug securely all wells before abandoning the same and to effectually shut off all water from the oil or gas-bearing strata; not to drill any well within 200 feet of any house or barn now on the premises without the lessor's written consent approved by the superintendent; to carry out at the expense of the lessee all reasonable orders and requirements of the oil and gas supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; to bury all pipe lines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; to pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

(g) **Regulations.**—To abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter in force relative to such leases: *Provided*, That no regulations hereafter approved shall effect a change in rate of royalty or annual rental herein specified without the written consent of the parties to this lease.

(A) **Assignment of lease.**—Not to assign this lease or any interest therein by an operating agreement or otherwise nor to sublet any portion of the leased premises before restrictions are removed, except with the approval of the Secretary of the Interior. If this lease is divided by the assignment of an entire interest in any part of it, each part shall be considered a separate lease under all the terms and conditions of the original lease.

#### 4. The lessor expressly reserves:

(a) **Disposition of surface.**—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, such disposition to be subject at all times to the right of the lessee herein to the use of so much of said surface as is necessary in the extraction and removal of the oil and gas from the land herein described.

(b) **Use of gas.**—The right to use sufficient gas free of charge for all stoves and inside lights in the principal dwelling house on said lands by making connection at his own expense with the well or wells thereon, the use of such gas to be at the lessor's risk at all times.

(c) **Royalty in kind.**—The right to elect on 30 days' written notice to take lessor's royalty in kind.

5. **Surrender and termination.**—The lessee shall have the right at any time during the term hereof to surrender and terminate this lease or any part thereof upon the payment of all rentals, royalties, and other obligations due and payable to the lessor; and in the event restrictions have not been removed, upon a showing satisfactory to the Secretary of the Interior that full provision has been made for conservation and protection of the property and the proper abandonment of all wells drilled on the portion of the lease surrendered, the lease to continue in full force and effect as to the lands not so surrendered. If this lease has been recorded lessee shall file a recorded release with his application to the superintendent for termination of this lease.

6. **Cancellation and forfeiture.**—When, in the opinion of the Secretary of the Interior, there has been a violation of any of the terms and conditions of this lease before restrictions are removed, the Secretary of the Interior shall have the right at any time after 30 days notice to the lessee, specifying the terms and conditions violated, and after a hearing, if the lessee shall so request within 30 days of receipt of notice, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land: *Provided*, That after restrictions are removed the lessor shall have and be entitled to any available remedy in law or equity for breach of this contract by the lessee.



(c) **Rental and royalty.**—To pay, beginning with the date of approval of the lease by the Secretary of the Interior, a rental of \$1.25 per acre per annum in advance during the continuous term, the rental so paid for any one year to be credited on the royalty for that year, together with a royalty of 12½ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased hereby, save and except oil, and/or gas used by the lessee for development and operation purposes on said lease, which oil or gas shall be royalty free. During the period of supervision, "value" for the purposes hereof may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the oil and gas supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed more evidence of or conclusive evidence of such value. When paid in value, such royalty shall be due and payable monthly on the last day of the calendar month following the calendar month in which produced; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessee unless otherwise agreed to by the parties thereto, at such time as may be required by the lessee. *Provided*, That the lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced: *And provided further*, That the lessee shall be in no manner responsible or held liable for loss or destruction of such oil in storage caused by acts of God. All rental and royalty payments, except as provided in sections 3 (c) and 4 (c) shall be made by check or draft drawn on a solvent bank, open for the transaction of business on the day the check or draft is issued, to the order of the superintendent. It is understood that in determining the value for royalty purposes of products, such as natural gasoline, that are derived from treatment of gas, a reasonable allowance for the cost of manufacture shall be made, such allowance to be two-thirds of the value of the marketable product unless otherwise determined by the Secretary of the Interior on application of the lessee or on his own initiative, and that royalty will be computed on the value of gas or casinghead gas, or on the products thereof (such as residue gas, natural gasoline, propane, butane, etc.), whichever is the greater.

(d) **Monthly statements.**—To furnish to the oil and gas supervisor monthly statements in detail in such form as may be prescribed by the Secretary of the Interior, showing the amount, quality, and value of all oil, gas, natural gasoline, or other hydrocarbon substances produced and saved during the preceding calendar month as a basis upon which to compute, for the superintendent, the royalty due the lessee. The leased premises and all wells, producing operations, improvements, machinery, and fixtures thereon and connected therewith and all books and accounts of the lessee shall be open at all times for the inspection of any duly authorized representative of the Secretary of the Interior.

(e) **Log of well.**—To keep a log in the form prescribed by the Secretary of the Interior of all the wells drilled by the lessee showing the strata and character of the formations passed through by the drill, which log or a copy thereof shall be furnished to the oil and gas supervisor.

(f) **Diligence, prevention of waste.**—To exercise reasonable diligence in drilling and operating wells for oil and gas on the lands covered hereby, while such production can be secured in paying quantities; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely all wells before abandoning the same and to effectively shut off all water from the oil or gas-bearing strata; not to drill any well within 200 feet of any house or barn now on the premises without the lessor's written consent approved by the superintendent; to carry out at the expense of the lessee all reasonable orders and requirements of the oil and gas supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; to bury all pipe lines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; to pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or



or born now on the premises without the lease. A written consent approved by the superintendent, to carry out the purposes of the lease all reasonable orders and requirements of the oil and gas supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; to bury all pipe lines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; to pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: Provided, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

(c) Regulations.—To abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter in force relative to such leases: Provided, That no regulations hereafter approved shall effect a change in rate of royalty or annual rental herein specified without the written consent of the parties to this lease.

(A) Assignment of lease.—Not to assign this lease or any interest therein by an operating agreement or otherwise nor to sublet any portion of the leased premises before restrictions are removed, except with the approval of the Secretary of the Interior. If this lease is divided by the assignment of an entire interest in any part of it, each part shall be considered a separate lease under all the terms and conditions of the original lease.

#### 4. The lessor expressly reserves:

(a) Disposition of surface.—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, such disposition to be subject at all times to the right of the lessee herein to the use of so much of said surface as is necessary in the extraction and removal of the oil and gas from the land herein described.

(b) Use of gas.—The right to use sufficient gas free of charge for all stoves and inside lights in the principal dwelling house on said lands by making connection at his own expense with the well or wells thereon, the use of such gas to be at the lessor's risk at all times.

(c) Royalty in kind.—The right to elect on 30 days' written notice to take lessor's royalty in kind.

5. Surrender and termination.—The lessee shall have the right at any time during the term hereof to surrender and terminate this lease or any part thereof upon the payment of all royalties, rentals and other obligations due and payable to the lessor; and in the event restrictions have not been removed, upon a showing to the Secretary of the Interior that full provision has been made for conservation and protection of the property and the production of all wells drilled on the portion of the lease surrendered, the lease to continue in full force and effect as to the portion not surrendered. If this lease has been recorded lessee shall file a recorded release with his application to the superintendent for termination of this lease.

6. Cancellation and forfeiture.—When, in the opinion of the Secretary of the Interior, there has been a violation of any of the terms and conditions of this lease before restrictions are removed, the Secretary shall have the right at any time after 30 days notice to the lessee, specifying the terms and conditions of the lease, to hold a hearing, if the lessee shall so request within 30 days of receipt of notice, to declare this lease null and void, and the Secretary shall be entitled and authorized to take immediate possession of the land: Provided, That after restrictions are removed the lessee shall have and be entitled to any available remedy in law or equity for breach of this contract by the lessor.

If this lease covers lands under the jurisdiction of the United States Civilized Tribes Indian Agency, the same shall be sent to the oil and gas inspector at that agency.

6-A. Division of income among lessors:—It is hereby agreed and understood by and between the lessors hereto that all income due them from this lease shall be divided among them in the proportion that the acreage owned by each lessor in the entire acreage leased at the time such income is due.



5 A 7. Removal of buildings, improvements, and equipment.—Lessee shall be the owner of and shall have the right to remove from the leased premises, within 90 days after termination of this lease, any and all buildings, structures, casing, material, and/or equipment placed thereon for the purpose of development and operation hereunder, save and except casing in wells and other material, equipment, and structures necessary for the continued operation of wells producing or capable of being produced in paying quantities as determined by the Secretary of the Interior, on said leased land at the time of surrender of this lease or termination thereof; and except as otherwise provided herein, all casing in wells, material, structures, and equipment shall be and become the property of the lessor.

8. Relinquishment of supervision by the Secretary of the Interior.—Should the Secretary of the Interior, at any time during the life of this instrument, relinquish supervision as to all or part of the acreage covered hereby, such relinquishment shall not bind lessee until said Secretary shall have given 30 days written notice. Until said requirements are fulfilled, lessee shall continue to make all payments due hereunder as heretofore in section 3 (c). After notice of relinquishment has been received by lessee, as herein provided, this lease shall be subject to the following further conditions:

(a) All rentals and royalties thereafter accruing shall be paid in the following manner: Rentals and royalties shall be paid to lessor or his successors in title, or to a trustee appointed under the provisions of section 9 hereof. Rentals and royalties shall be paid directly to lessor or his successors in title, or to said trustee as the case may be.

(b) If, at the time supervision is relinquished by the Secretary of the Interior, lessee shall have made all payments then due hereunder, and shall have fully performed all obligations on its part to be performed up to the time of such relinquishment, then the bond given to secure the performance hereof, on file in the Indian Office, shall be of no further force or effect.

(c) Should such relinquishment affect only part of the acreage, then lessee may continue to drill and operate the land covered hereby as an entirety: *Provided*, That lessee shall pay in the manner prescribed by section 3 (c), for the benefit of lessor such proportion of all rentals and royalties due hereunder as the acreage retained under the supervision of the Secretary of the Interior bears to the entire acreage of the lease, the remainder of such rentals and royalties to be paid directly to lessor or his successors in title or said trustee as the case may be, as provided in subdivision (a) of this section.

9. Division of fee.—It is covenanted and agreed that should the fee of said land be divided into separate parcels, held by different owners, or should the rental or royalty interests hereunder be so divided in ownership, after the execution of this lease and after the Secretary of the Interior relinquishes supervision hereof, the obligations of lessee hereunder shall not be added to or changed in any manner whatsoever save as specifically provided by the terms of this lease. Notwithstanding such separate ownership, lessee may continue to drill and operate said premises as an entirety: *Provided*, That each separate owner shall receive such proportion of all rentals and royalties accruing after the vesting of his title as the acreage of the fee, or rental or royalty interest, bears to the entire acreage covered by the lease; or to the entire rental and royalty interest as the case may be: *Provided further*, That if, at any time after departmental supervision hereof is relinquished, in whole or in part, there shall be four or more parties entitled to rentals or royalties hereunder, whether said parties are so entitled by virtue of undivided interests or by virtue of ownership of separate parcels of the land covered hereby, lessee, at his election may withhold the payment of further rentals or royalties (except as to the portion due the Indian lessor while under restriction), until all of said parties shall agree upon and designate in writing and in a recordable instrument a trustee to receive all payments due hereunder on behalf of said parties and their respective successors in title. Payments to said trustee shall constitute lawful payments hereunder, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their respective successors in title.

10. Drilling and producing restrictions.—It is covenanted and agreed that the Secretary of the Interior may impose restrictions as to time or times for the drilling of wells and as to the production from any well or wells drilled when in his judgment such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Indian lessor, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, or regulations by competent Federal or State authorities or lawful agreements among operators regulating either drilling or production, or both.

11. Unit operation.—The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit development of the field or area, affecting the leased lands, or any pool thereof, if and when collectively adopted by a majority operating interest therein and approved by the Secretary of the Interior, during the period of supervision.

parties and their respective successors in title. Payments to said trustee shall constitute lawful payments hereunder, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their respective successors in title.

10. Drilling and producing restrictions.—It is covenanted and agreed that the Secretary of the Interior may impose restrictions as to time or times for the drilling of wells and as to the production from any well or wells drilled when in his judgment such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Indian lessor, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, or regulations by competent Federal or State authorities or lawful agreements among operators regulating either drilling or production, or both.

11. Unit operation.—The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit development of the field or area, affecting the leased lands, or any pool thereof, if and when collectively adopted by a majority operating interest therein and approved by the Secretary of the Interior, during the period of supervision.

12. Helium public emergency.—It is covenanted and agreed that helium gas, carbon dioxide gas, and all other natural gases are included under the term "gas" as used in this lease, and in the event gas is discovered containing helium the United States Government shall have the right to purchase, at reasonable prices, all or any part of the production and to regulate the amount and manner of production; and in time of war or other public emergency, the United States Government shall have the option to purchase all or any part of the products produced under this lease.

13. Conservation.—The lessee in consideration of the rights herein granted agrees to abide by the provisions of any act of Congress, or any order or regulation prescribed pursuant thereto, relating to the conservation, production, or marketing of oil, gas, or other hydrocarbon substances.

14. Heirs and successors in interest.—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors of, or assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

Two witnesses to execution by lessor:

Anadarko, Okla.

P.O.

Anadarko, Okla.

P.O.

Lucas May Minkaut (SEAL)

S.B. McCown (SEAL)  
S.B. McCown, Supt. Kiowa Indian Agency,  
for and on behalf of Kosope Maynab-  
nah, a minor born in 1925.



Two witnesses to execution by James: Ethel C. Sibors

Alfred B. Baker

P.O. Anadarko, Oklahoma.

W. H. Johnson

P.O. Anadarko, Oklahoma.

Attest: \_\_\_\_\_

State of Oklahoma

County of Adair

Before me, a notary public, on this 22nd day of January, 1937, personally appeared Oliver Maynabench, an adult born in 1912; and E. E. McCown, Supt. Kiowa Indian Agency, for and on behalf of George Maynabench, a minor born in 1923.

to me known to be the identical persons who executed the within and foregoing lease, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

My commission expires June 30, 1940

Frank J. Smith  
Notary Public.

UNITED STATES  
DEPARTMENT OF THE INTERIOR

Washington, D.C.

APPROVED

Oscar L. Chapman  
Assistant Secretary of the Interior

DEPARTMENT OF THE INTERIOR

Washington, D.C.

APPROVED

Oscar L. Chapman  
Assistant Secretary of the Interior

Filed for record this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_

Notary received.

*Handwritten notes and signatures in the bottom left corner.*

*Vertical stamp and handwritten notes in the bottom right corner.*



36 7. Removal of buildings, improvements, and equipment.—Lessee shall be the owner of and shall have the right to remove from the leased premises, within 90 days after termination of this lease, any and all buildings, structures, casing, material, and/or equipment placed thereon for the purpose of development and operation hereunder, save and except casing in well and other material, equipment, and structures necessary for the continued operation of wells producing or capable of being produced in paying quantities as determined by the Secretary of the Interior, on said leased land at the time of surrender of this lease or termination thereof; and except as otherwise provided herein, all casing in wells, material, structures, and equipment shall be and become the property of the lessor.

8. Relinquishment of supervision by the Secretary of the Interior.—Should the Secretary of the Interior, at any time during the life of this instrument, relinquish supervision as to all or part of the acreage covered hereby, such relinquishment shall not bind lessee until said Secretary shall have given 30 days written notice. Until said requirements are fulfilled, lessee shall continue to make all payments due hereunder as heretofore in section 3 (c). After notice of relinquishment has been received by lessee, as herein provided, this lease shall be subject to the following further conditions:

(a) All rentals and royalties thereafter accruing shall be paid in the following manner: Rentals and royalties shall be paid to lessor or his successors in title, or to a trustee appointed under the provisions of section 9 hereof. Rentals and royalties shall be paid directly to lessor or his successors in title, or to said trustee as the case may be.

(b) If, at the time supervision is relinquished by the Secretary of the Interior, lessee shall have made all payments then due hereunder, and shall have fully performed all obligations on its part to be performed up to the time of such relinquishment, then the bond given to secure the performance hereof, on file in the Indian Office, shall be of no further force or effect.

(c) Should such relinquishment affect only part of the acreage, then lessee may continue to drill and operate the land covered hereby as an entirety: Provided, That lessee shall pay in the manner prescribed by section 3 (c), for the benefit of lessor such proportion of all rentals and royalties due hereunder as the acreage retained under the supervision of the Secretary of the Interior bears to the entire acreage of the lease, the remainder of such rentals and royalties to be paid directly to lessor or his successors in title or said trustee as the case may be, as provided in subdivision (a) of this section.

9. Division of fee.—It is covenanted and agreed that should the fee of said land be divided into separate parcels, held by different owners, or should the rental or royalty interests hereunder be so divided in ownership, after the execution of this lease and after the Secretary of the Interior relinquishes supervision hereof, the obligations of lessee hereunder shall not be added to or changed in any manner whatsoever save as specifically provided by the terms of this lease. Notwithstanding such separate ownership, lessee may continue to drill and operate said premises as an entirety: Provided, That each separate owner shall receive such proportion of all rentals and royalties accruing after the vesting of his title as the acreage of the fee, or rental or royalty interest, bears to the entire acreage covered by the lease; or to the entire rental and royalty interest as the case may be: Provided further, That if, at any time after departmental supervision hereof is relinquished, in whole or in part, there shall be four or more parties entitled to rentals or royalties hereunder, whether said parties are so entitled by virtue of undivided interests or by virtue of ownership of separate parcels of the land covered hereby, lessee, at his election may withhold the payment of further rentals or royalties (except as to the portion due the Indian lessor while under restriction), until all of said parties shall agree upon and designate in writing and in a recordable instrument a trustee to receive all payments due hereunder on behalf of said parties and their respective successors in title. Payments to said trustee shall constitute lawful payments hereunder, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their respective successors in title.

10. Drilling and producing restrictions.—It is covenanted and agreed that the Secretary of the Interior may impose restrictions as to time or times for the drilling of wells and as to the production from any well or wells drilled when in his judgment such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Indian lessor, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, or regulations by competent Federal or State authorities or lawful agreements among operators regulating either drilling or production, or both.

11. Unit operation.—The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit development of the field or area, affecting the leased lands, or any pool thereof, if and when collectively adopted by a majority operating interest therein and approved by the Secretary of the Interior, during the period of supervision.

upon and designate in writing and in a recordable instrument a trustee to receive all payments due hereunder on behalf of said parties and their respective successors in title. Payments to said trustee shall constitute lawful payments hereunder, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their respective successors in title.

10. Drilling and producing restrictions.—It is covenanted and agreed that the Secretary of the Interior may impose restrictions as to time or times for the drilling of wells and as to the production from any well or wells drilled when in his judgment such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Indian lessor, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, or regulations by competent Federal or State authorities or lawful agreements among operators regulating either drilling or production, or both.

11. Unit operation.—The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit development of the field or area, affecting the leased lands, or any pool thereof, if and when collectively adopted by a majority operating interest therein and approved by the Secretary of the Interior, during the period of supervision.

12. Helium—public emergency.—It is covenanted and agreed that helium gas, carbon dioxide gas, and all other natural gases are included under the term "gas" as used in this lease, and in the event gas is discovered containing helium the United States Government shall have the right to purchase, at reasonable prices, all or any part of the production and to regulate the amount and manner of production; and in time of war or other public emergency, the United States Government shall have the option to purchase all or any part of the products produced under this lease.

13. Conservation.—The lessee in consideration of the rights herein granted agrees to abide by the provisions of any act of Congress, or any order or regulation prescribed pursuant thereto, relating to the conservation, production, or marketing of oil, gas, or other hydrocarbon substances.

14. Heirs and successors in interest.—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors of, or assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned:

Two witnesses to execution by lessor:

Albert Clark

Adair, Okla.

P. O.

Chick

Adair, Okla.

P. O.

Chaletsin

Julia Mulkey

Ellen Mulkey

U. S. Indian Agency  
for the State of Oklahoma  
Adair, Oklahoma



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF INDIAN AFFAIRS

**I-51-Ind-22874**

# OIL AND GAS MINING LEASE—ALLOTTED INDIAN LANDS

TRIBE, STATE OF

9. 1. 1944

THIS INDENTURE OF LEASE made and entered into in quintuplicate this 22nd day of

January 37 JULIA MULKINAY, CHARLES-TWIN, and  
ELIOT MULKINAY, adults born in 1888, 1873, and 1898, respectively; and  
W.B. McCown, Capt. Kiowa Indian Agency, for and on behalf of PHILIP TOJIS-  
OAN, a minor born in 1870, heirs of EVAN MULKINAY, deceased (Marriage  
established under Probate Nos. 180880-13; 60820-31; and 7124-32).

of Adair, State of Oklahoma, allottee No. 548  
(roll No. \_\_\_\_\_), of the Apache Tribe of Indians, designated herein as  
lessor, and CLYDE M. BECKER

of Chickasha, State of Oklahoma, herein designated as

WITNESSETH  
200.00

1. Lessor, in consideration of a cash bonus of \$....., paid to the Superintendent of the Indian Agency having jurisdiction, hereinafter called the superintendent, receipt of which is hereby acknowledged, and in consideration of rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and natural gas deposits in or under the following-

**SECRET**

of Chickasha, State of Oklahoma, herein designated as \_\_\_\_\_  
 name: \_\_\_\_\_

WITNESSETH  
254.00

1. Lessor, in consideration of a cash bonus of \$..... paid to the Superintendent of the Indian Agency having jurisdiction, hereinafter called the superintendent, receipt of which is hereby acknowledged, and in consideration of rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and natural gas deposits in or under the following-

100

**Calculus**

described tracts of land situated in the county of \_\_\_\_\_ State of \_\_\_\_\_, and more particularly described as follows:

The Southeast quarter of Section Two in Township Five North of Range Twelve West of the Indian Meridian;

containing ----- acres more or less, together with the right to construct and maintain thereon all works, buildings, plants, waterways, roads, telegraph and telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment hereof for the term of 10 years from and after the approval hereof by the Secretary of the Interior and on much longer thereafter as oil and/or gas is produced in paying quantities from said land.

2. The term "oil and gas supervisor" as employed herein shall refer to such officer or officers as the Secretary of the Interior may designate to supervise oil and gas operations on Indian lands. The term "superintendent" as used herein shall refer to the superintendent or other official in charge of the Indian Agency having jurisdiction over the lands leased.

2. In consideration of the foregoing, the House hereby agrees:

(4) Bond.—To furnish such bond as may be required by the regulations of the Secretary of the Interior, with satisfactory surety, or United States bonds as surety therefor, conditioned upon compliance with the terms of this lease.

[illegible]

Exhibits

Explosive



(c) **Rental and royalty.**—To pay, beginning with the date of approval of the lease by the Secretary of the Interior, a rental of \$1.25 per acre per annum in advance during the continuance hereof, the rental so paid for any one year to be credited on the royalty for that year, together with a royalty of 12½ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased herein, save and except oil, and/or gas used by the lessee for development and operation purposes on said lease, which oil or gas shall be royalty free. During the period of supervision, "value" for the purposes hereof may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the oil and gas supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly on the last day of the calendar month following the calendar month in which produced; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor. *Provided*, That the lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced: *And provided further*, That the lessee shall be in no manner responsible or held liable for loss or destruction of such oil in storage caused by acts of God. All rental and royalty payments, except as provided in sections 8 (a) and 4 (c) shall be made by check or draft drawn on a solvent bank, open for the transaction of business on the day the check or draft is issued, to the order of the superintendent. It is understood that in determining the value for royalty purposes of products, such as natural gasoline, that are derived from treatment of gas, a reasonable allowance for the cost of manufacture shall be made, such allowance to be two-thirds of the value of the marketable product unless otherwise determined by the Secretary of the Interior on application of the lessee or on his own initiative, and that royalty will be computed on the value of gas or casinghead gas, or on the products thereof (such as residue gas, natural gasoline, propane, butane, etc.), whichever is the greater.

(d) **Monthly statements.**—To furnish to the oil and gas supervisor monthly statements in detail in such form as may be prescribed by the Secretary of the Interior, showing the amount, quality, and value of all oil, gas, natural gasoline, or other hydrocarbon substances produced and saved during the preceding calendar month as a basis upon which to compute, for the superintendent, the royalty due the lessor. The leased premises and all wells, producing operations, improvements, machinery, and fixtures thereon and connected therewith and all books and accounts of the lessee shall be open at all times for the inspection of any duly authorized representative of the Secretary of the Interior.

(e) **Log of well.**—To keep a log in the form prescribed by the Secretary of the Interior of all the wells drilled by the lessee showing the strata and character of the formations passed through by the drill, which log or a copy thereof shall be furnished to the oil and gas supervisor.

(f) **Diligence, prevention of waste.**—To exercise reasonable diligence in drilling and operating wells for oil and gas on the lands covered hereby, while such products can be secured in paying quantities; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely all wells before abandoning the same and to effectually shut off all water from the oil or gas-bearing strata; not to drill any well within 300 feet of any house or barn now on the premises without the lessor's written consent approved by the superintendent; to carry out at the expense of the lessee all reasonable orders and requirements of the oil and gas supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; to bury all pipe lines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; to pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

the same and to effectually shut off all water from the oil or gas-bearing strata; not to drill any well within 300 feet of any house or barn now on the premises without the lessor's written consent approved by the superintendent; to carry out at the expense of the lessee all reasonable orders and requirements of the oil and gas supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; to bury all pipe lines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; to pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

(g) **Regulations.**—To abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter in force relative to such leases: *Provided*, That no regulations hereafter approved shall effect a change in rate of royalty or annual rental herein specified without the written consent of the parties to this lease.

(h) **Assignment of lease.**—Not to assign this lease or any interest therein by an operating agreement or otherwise nor to sublet any portion of the leased premises before restrictions are removed, except with the approval of the Secretary of the Interior. If this lease is divided by the assignment of an entire interest in any part of it, each part shall be considered a separate lease under all the terms and conditions of the original lease.

#### 4. The lessor expressly reserves:

(a) **Disposition of surface.**—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, such disposition to be subject at all times to the right of the lessee herein to the use of so much of said surface as is necessary in the extraction and removal of the oil and gas from the land herein described.

(b) **Use of gas.**—The right to use sufficient gas free of charge for all stoves and inside lights in the principal dwelling house on said lands by making connection at his own expense with the well or wells thereon, the use of such gas to be at the lessor's risk at all times.

(c) **Royalty in kind.**—The right to elect on 30 days' written notice to take lessor's royalty in kind.

5. **Surrender and termination.**—The lessee shall have the right at any time during the term hereof to surrender and terminate this lease or any part thereof upon the payment of all rentals, royalties, and other obligations due and payable to the lessor; and in the event restrictions have not been removed, upon a showing satisfactory to the Secretary of the Interior that full provision has been made for conservation and protection of the property and the proper abandonment of all wells drilled on the portion of the lease surrendered, the lease to continue in full force and effect as to the lands not so surrendered. If this lease has been recorded lessee shall file a recorded release with his application to the superintendent for termination of this lease.

6. **Cancellation and forfeiture.**—When, in the opinion of the Secretary of the Interior, there has been a violation of any of the terms and conditions of this lease before restrictions are removed, the Secretary of the Interior shall have the right at any time after 30 days notice to the lessee, specifying the terms and conditions violated; and after a hearing, if the lessee shall so request within 30 days of receipt of notice, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land: *Provided*, That after restrictions are removed the lessor shall have and be entitled to any available remedy in law or equity for breach of this contract by the lessee.

<sup>1</sup> If this lease covers lands under the jurisdiction of the ~~United~~ Civilized Tribes Indian Agency, the statements referred to shall be sent to the oil and gas inspector at that agency.

**6-A. Division of Income among Lessors:**—It is hereby agreed and understood by and between the lessors hereto that all income due them from this lease shall be divided among them in the proportion that the acreage owned by each bears to the entire acreage leased at the time such income is due. 2/5



Two witnesses to execution by paper:

Ethel O. Gibson

Wyle M. Barker

P. O. Anadarko, Oklahoma.

Ethel O. Gibson

P. O. Anadarko, Oklahoma.

Attest:

STATE OF Oklahoma

COUNTY OF Caddo

ss:

I, Ethel O. Gibson, a notary public, on this 22nd day of January, 1937, personally appeared Charles John and Ellen Mulkey, adults, and W. B. McCown, Supt. Kiowa Indian Agency, for and on behalf of Philip Twinegar, a minor born in 1920,

to be known to be the identical person who executed the within and foregoing lease, and acknowledged to me that they

executed the same as their free and voluntary act and deed for the uses and purposes therein set forth:

My commission expires June 30, 1940

Ethel O. Gibson  
Notary Public.

UNITED STATES  
DEPARTMENT OF THE INTERIOR

APPROVED

Washington, D. C.

APR 14 1937

19

UNITED STATES  
DEPARTMENT OF THE INTERIOR

APPROVED

Washington, D. C.

APR 14 1937

19

(Sgd.) OSCAR L. CHAPMAN

Assistant Secretary of the Interior

Filed for record this \_\_\_\_\_ day of \_\_\_\_\_

19 \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_

Rental received, \$ \_\_\_\_\_

2907  
2442  
Ethel Mulkey et al  
W. B. Barker

Aug 1 1938  
395  
79

W. B. Barker







[fol. 31]

## EXHIBIT "D" TO PETITION

## Notice of Intention to File Suit for Recovery of Illegal Taxes

To Oklahoma Tax Commission:

The Texas Company herein tenders its two checks in the sums of \$31,103.30 and \$553.25, respectively, being in payment of the Oklahoma Gross Production taxes and of the Oklahoma Proration taxes, respectively, on oil purchased by it at the wells (including also purchases so made by its Oil Purchase Department from its Producing Department) in the State of Oklahoma during the month of September, 1942. Of said taxes so paid, said The Texas Company hereby gives notice that it complains that the following are illegal and void, namely:

First. Gross Production taxes of \$492.33 and Proration taxes of \$10.01 on 8005.32 barrels of oil produced from its oil and gas leasehold estate covering Southwest Quarter of Southwest Quarter of Section 35, Township 6 North, Range 12 West.

Second. Gross Production taxes of \$491.13 and Proration taxes of \$9.92 on 7938.31 barrels of oil produced from its oil and gas leasehold estate covering lots 1 and 2 and South Half of Northeast Quarter of Section 2, Township 5 North, Range 12 West.

Third. Gross Production taxes of \$914.23 and Proration taxes of \$18.43 on 14744.92 barrels of oil produced from its oil and gas leasehold estate covering Southeast Quarter [fol. 32] of Section 2, Township 5 North, Range 12 West.

All of said properties being in Caddo County, Oklahoma. The above sets out the number of barrels of oil so purchased from said properties, less the one-eighth royalty oil, except that as to said Southeast Quarter of said Section 2, the said 14744.92 barrels is 9/16 of the seven-eighths working interest in all oil so produced.

Said The Texas Company states that said Taxes itemized above, in the total sum of \$1936.05 are illegal and void for the reason that as to the lands described in each of the above paragraphs numbered "First", "Second", and "Third", respectively, it is the holder of a departmental



oil and gas mining lease pursuant to which said oil was produced, and that said leases cover lands of restricted Indians and were and are subject to the supervision and control of the United States Government, except that as to the said lease covering said lands set out in said paragraph numbered "Third" the said supervision and control thereof has been relinquished as to a 7/16 interest, and the royalty interest as to said last referred to lands is claimed to be held by restricted Indians only as to a 9/16 interest; that except as stated above said respective leases are instrumentalities of the United States Government, and that The Texas Company in the operation thereof and in the production of such oil was and is a Federal instrumentality [fol. 33] and agency; and that the above taxes in said sum of \$1936.05 are illegal and void and violative of the Constitution of the United States of America because they constitute an attempt by the State of Oklahoma to tax a Federal instrumentality and agency.

Notice is hereby given that within the time allowed by law, suit will be brought by The Texas Company against you to recover said void and illegal taxes.

Dated this 29th day of October, 1942.

The Texas Company, by (Signed) H. L. Stewart,  
Agent.

The original Notice of which the above and foregoing is a copy, was received on this 30 day of October, 1942,

L. L. Leininger, Director Gross Production Division,  
Oklahoma Tax Commission.

Filed In District Court, Oklahoma County, Okla. Mar. 29, 1945. By W. H. Regier, Deputy.

[fol. 34]                      EXHIBIT "E" TO PETITION

Notice Of Intention To File Suit For Recovery Of Illegal  
Taxes

To Oklahoma Tax Commission:

The Texas Company hereby tenders its two checks in the sums of \$31,994.68 and \$568.62, respectively, being in payment of the Oklahoma Gross Production Taxes and of



the Oklahoma Proration Taxes, respectively, on oil purchased by it at the wells (including also purchases so made by its Oil Purchase Department from its Producing Department) in the State of Oklahoma during the month of *Oklahoma*, 1942. (Of said taxes so paid, said The Texas Company hereby gives notice that it complains that the following are illegal and void, namely:

First. Gross Production Taxes of \$503.80 and Proration Taxes of \$10.24 on 8,191.89 barrels of oil produced from its oil and gas leasehold estate covering Southwest Quarter of Southwest Quarter of Section 35, Township 6 North, Range 12 West.

Second. Gross Production taxes of \$515.03 and Proration taxes of \$10.33 on 8,264.78 barrels of oil produced from its oil and gas leasehold estate covering Lots 1 and 2 and South Half of Northeast Quarter of Section 2, Township 5 North, Range 12 West.

Third. Gross Production taxes of \$937.66 and Proration taxes of \$18.81 on 15,047.91 barrels of oil produced from its oil and gas leasehold estate covering Southeast Quarter of Section 2, Township 5 North, Range 12 West.

[fol. 35] All of said properties being in Caddo County, Oklahoma. The above sets out the number of barrels of oil so purchased from said properties, less the one-eighth royalty oil, except that as to said Southeast Quarter of said Section 2 the said 15,047.91 barrels is 9/16 of the seven-eighths working interest in all oil so produced.

Said The Texas Company states that said taxes itemized above, in the total sum of \$1,995.87 are illegal and void for the reason that as to the lands described in each of the above paragraphs numbered "First", "Second" and "Third", respectively, it is the holder of a departmental oil and gas mining lease pursuant to which said oil was produced, and that said leases cover lands of restricted Indians and were and are subject to the supervision and control of the United States Government except that as to the said lease covering said lands set out in said paragraph numbered "Third" the said supervision and control thereof has been relinquished as to a 7/16 interest, and the royalty interest as to said last referred to lands is claimed to be held by restricted Indians only as to a 9/16 interest; that except as stated above said respective leases



are instrumentalities of the United States Government, and that The Texas Company in the operation thereof and in the production of such oil was and is a Federal instrumentality and agency; and that the above taxes in said sum of \$1,995.87 are illegal and void and violative of the Constitution of the United States of America and of the Acts of Congress of the United States of America because they [fol. 36] constitute an attempt by the State of Oklahoma to tax a Federal instrumentality and agency.

Notice is hereby given that within the time allowed by law, suit will be brought by The Texas Company against you to recover said void and illegal taxes.

Dated this 25th day of November, 1942.

The Texas Company, by H. L. Stewart, Agent.

The original Notice of which the above and foregoing is a copy, was received on this — day of November, 1942.

(Stamped): Mail Division, Received, Nov. 27, 1942.

Oklahoma Tax Commission.

[fol. 37] [File endorsement omitted.]

[fol. 38] IN THE DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

•PRAECIPE FOR SUMMONS—Filed November 30, 1942

The Clerk of said Court will issue a Summons in the above entitled cause, directed to the Sheriff of Oklahoma County, against the Defendant, to-wit: Oklahoma Tax Commission, — (Serve Chairman of Oklahoma Tax Commission) requiring said Defendant to answer on or before the 30th day of December, 1942 and returnable on the 10th day of December, 1942, and you will endorse thereon, suit brought for recovery of taxes paid under protest and unless said Defendant answers, judgment will be taken for the sum of \$3,931.92 with interest at three per cent per annum from the 30th day of October, 1942.

Dated November 30, 1942.

(Signed) Ames, Monnet, Hayes & Brown, Attorney for Plaintiff.

[fol. 39] [File endorsement omitted.]



[fol. 40] IN THE DISTRICT COURT OF OKLAHOMA COUNTY

SUMMONS AND RETURN—Filed December 2, 1942

The State of Oklahoma to the Sheriff of Oklahoma County,  
in Said State—Greetings:

You are hereby commanded to notify the defendant Oklahoma Tax Commission that it has been sued by The Texas Company, a corporation, In the District Court sitting in and for said County of Oklahoma, and unless it answers by the 30th day of December, 1942, the petition of said plaintiff against said defendant filed in the District Court, such petition will be taken as true and judgment rendered accordingly.

You will make due return on this summons on the 10th day of December, A. D. 1942.

Witness my hand and seal of said court, affixed at my office in Oklahoma City, Oklahoma, this 30th day of November, 1942.

Cliff Myers, Court Clerk, (Signed) by Elmo McCallister, Deputy. (Seal.)

[fol. 41] Suit Brought For recovery of taxes paid under protest in the sum of \$3,931.92 with interest at 3% from October 30, 1942.

If defendant — fail — to answer, judgment will be taken for the sum of \$—, with interest at the rate of — per centum per annum from the — day of — 19—, and an attorney fee of \$— and cost of suit.

Cliff Myers, Court Clerk, (Signed) by Elmo McCallister, Deputy. (Seal.)

#### Sheriff's Return

STATE OF OKLAHOMA,  
Oklahoma County, ss:

Received this Writ this 30 day of Nov. 1942, and executed the same in my County by serving the within named defendant, as follows, to-wit: Oklahoma Tax Commission on the 30th day of Nov. 1942, by delivering a true and correct copy hereof, with endorsements thereon, to J. D. Dunn, he being the Chairman of the Oklahoma Tax Commission of the State of Oklahoma.



STATE OF OKLAHOMA,

~~George E. [unclear]~~ } ss.

ACKNOWLEDGMENT SIGNED BY NAME

~~John [unclear]~~ day of JANUARY, A. D. 1940, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared John Melvin [unclear], an adult

~~John [unclear]~~ who executed the within and foregoing instrument by himself, last

at my residence and in the presence of Albert Clark

~~John [unclear]~~ as witnesses, and acknowledged to me that she

~~John [unclear]~~ free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and seal of office the day and year last above written.

My Commission Expires June 30, 1940

Frank [unclear]  
Notary Public.



Dated the 30th day of Nov. 1942.

George Goff, Sheriff, (Signed) by Chas. N. Sanders,  
Deputy.

[fol. 42] [File endorsement omitted.]

[fol. 43] IN THE DISTRICT COURT IN AND FOR OKLAHOMA  
COUNTY

[Title omitted]

DEMURRER—Filed December 29, 1942

1

Comes now the above named defendant and demurs to plaintiff's first cause of action in his petition alleged, and for grounds of such demurrer, says:

That the first cause of action of said petition shows upon its face that it does not state facts sufficient to constitute cause of action in favor of the plaintiff and against the defendant.

Wherefore, defendant prays judgment of the Court.

2

Comes now the above named defendant and demurs to plaintiff's second cause of action in its petition alleged, and for grounds of such demurrer, says:

That the second cause of action in said petition alleged shows upon its face that it does not state facts sufficient to [fol. 44] constitute cause of action in favor of plaintiff and against defendant.

Wherefore, Defendant prays judgment of the Court.

(Signed) W. A. Barnett, (Typed) W. A. Barnett,  
(Signed) A. L. Herr, (Typed) A. L. Herr, Attorneys for Defendant.

[File endorsement omitted.]

[fols. 45-46] (Caption and appearances, Jan. 18, 1945, omitted in printing.)



[fol. 47] (Before the presentation of the Demurrer, the plaintiff asked and was given leave to file an "Amendment to Petition"; a true and correct copy of the same being as follows.)

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY

[Title omitted]

AMENDMENT TO PETITION—Filed January 18, 1945

Comes now The Texas Company, a Corporation, plaintiff in the above styled cause, and leave of Court being first had and obtained, files this its amendment to its petition heretofore filed herein, and by way of such amendment to its First and Second Causes of Action in said petition contained, in addition to the matters and things therein set out, and not in lieu thereof, alleges and says:

15a. That during all of the time set out in said petition the said lands covered by said leases were, and, except as to the interests as to which supervision has been released as set out in said petition, still are restricted Indian lands of restricted members of the Kiowa and Apache Indian Tribes, respectively, and are tribal lands of said Indian tribes, and the title to which remained and remains in the [fol. 48] United States of America, in trust for the respective restricted Indian Allottees to which said lands were respectively allotted, and were and are subject to the supervision and control of the United States of America; and that said oil and gas leases covering said lands likewise were and are, except to the extent as to which supervision has been released, as aforesaid, subject to the supervision and control of the United States of America.

15b. That insofar as said taxing statutes referred to in said petition are held to impose either such gross production taxes or such "proration taxes" upon oil produced by plaintiff from any of said lands, as set out, such statutes, and each of them, were and are illegal and void for the reason that they and each of them constitute an interference with or an imposed servitude upon a lawful commercial enterprise with restricted Indians, over which the Congress of the United States has absolute control, and are in conflict with and violative of Article 1, Section 8 of the Constitu-



tion of the United States which confers upon Congress the exclusive power and jurisdiction to regulate commerce with the Indian Tribes.

15c. That in addition to the above, insofar as said taxing statutes are held to impose either such gross production taxes or such "proration taxes" upon oil produced by plaintiff from any said lands, as set out, such statutes, and each of them, were and are illegal and void for the reason that they, and each of such statutes, and the taxes thereby imposed, constitute a substantial and exorbitant burden and [fol. 49] hindrance upon an agency or instrumentality of the United States Government, namely, the plaintiff's said oil and gas leases, and each of them, and the Congress of the United States of America in the discharge of its duties and obligations as guardian of said Indian Wards, and this plaintiff as lessee under said leases in the performance of its duties and obligations as such lessee; and further that such statutes and such taxes so imposed materially and substantially interfere with, impair and hinder the usefulness and efficiency of such agencies or instrumentalities, and each of them, in serving said United States Government as they were intended to serve it.

Wherefore, its petition and this its amendment thereto considered, plaintiff prays that it have judgment herein against the defendant, Oklahoma Tax Commission, as prayed for in its said petition on file herein, and that it have such other, further and general relief as it may be entitled to receive by law or in equity in the premises.

(S.) John R. Ramsey, B. W. Griffith, Ames, Monnet,  
Hayes & Brown, Attorneys for Plaintiff, The Texas  
Company.

[fol. 50] [File endorsement omitted.]



[fol. 51] IN THE DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

MINUTE ENTRY OF HEARING

1945:

Jan. 18, Ent.: Comes on for hearing on Demurrer. Plaintiff granted leave to file Amendment to petition. Okla. Tax Commission granted leave to re-file Demurrer to Amendment to Petition heretofore. Comes on for hearing on Demurrer; argued by counsel and passed until Jan. 25, 1945.

Babcock.

[fols. 52-53] (Caption and appearances, Jan. 25, 1945, omitted in printing.)

[fol. 54] IN THE DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

MINUTE ENTRY OF JUDGMENT—January 25, 1945

Ent.: Comes on for decision of the Court. Demurrer sustained; Exc. allowed. Plaintiff refuses to plead further and Plaintiff's Petition dismissed. Plaintiff gives Notice of Appeal to Supreme Court; time to make and serve Case-Made extended 30 days; with 3 days to suggest amendments; with 3 days for either party to sign and settle same. Clerk directed to note same on Trial Docket.

Babcock.



[fol. 55] IN THE DISTRICT COURT IN AND FOR OKLAHOMA  
COUNTY, STATE OF OKLAHOMA

No. 106,796

THE TEXAS COMPANY, a Corporation, Plaintiff,

vs.

OKLAHOMA TAX COMMISSION, Defendant

JOURNAL ENTRY OF JUDGMENT—Filed February 12, 1945

Now, on this, the 18th day of January, 1945, the above styled case came on to be heard on the demurrer of the defendant to the petition of the plaintiff; and the plaintiff, The Texas Company, a corporation, appeared by its attorneys, Ames, Monnet, Hayes & Brown and B. W. Griffith; and the defendant, Oklahoma Tax Commission, appeared by its attorneys, A. L. Herr and C. W. King; and, thereupon, the plaintiff requested permission to file its Amendment to its petition herein, and there being no objection thereto, permission was granted the plaintiff to file said amendment to its petition on file herein, and said amendment to petition was filed instanter; and, thereupon, the defendant requested permission to refile its said demurrer, heretofore filed herein, to the plaintiff's petition and to said [fol. 56] amendment to said petition, and there being no objection thereto, the court granted the defendant permission to refile its demurrer and ordered that said demurrer be considered as refiled to said petition and to said amendment thereto and ordered that said demurrer be refiled instanter which was accordingly done.

Thereupon, the demurrer of said defendant to the plaintiff's said petition and said amendment thereto was presented to the court, and the court having heard and considered the argument of counsel, took said demurrer under advisement and continued this cause until the 25th day of January, 1945, for an adjudication upon said demurrer; and now, on this, the 25th day of January, 1945, this cause came on for a decision and adjudication by the court upon the said demurrer of the defendant; and the parties appeared by their respective counsel, as above set forth; and, thereupon, the court having fully considered this matter, finds and orders that the said demurrer of the defendant to the



petition of the plaintiff and to the amendment to said petition should be and the same is hereby sustained, both as to the plaintiff's first cause of action and as to the plaintiff's second cause of action, to which action of the court in sustaining said demurrer the plaintiff excepts as to each of its causes of action and exceptions are by the court allowed. Thereupon, the plaintiff, in open court, announced that it elected to stand upon its said petition and its said amendment to said petition and refused to plead further. There- [fol. 57] upon, the court ordered that the said petition of the plaintiff and said amendment thereto be and the same are hereby dismissed and further ordered that judgment be rendered herein in favor of the defendant and against the plaintiff, to all of which the plaintiff duly excepted, and exceptions were by the court allowed.

It is therefore by the court ordered, adjudged and decreed that said demurrer of the defendant to the petition of the plaintiff and the amendment thereto, on file herein, be and the same is hereby sustained and that the said petition of the plaintiff and said amendment thereto be and the same are hereby dismissed, and that said defendant, The Texas Company, that said plaintiff under either of the plaintiff's said causes of action, and that the defendant go hence without *day* with its costs herein; to all of which the plaintiff excepted, and exceptions were by the court allowed.

Thereupon, the plaintiff gave notice in open court of its intention to appeal to the Supreme Court of Oklahoma from the order of the court in sustaining the said demurrer of the defendant to the petition of the plaintiff and to the amendment to said petition and from the order and judgment of the court in dismissing the said petition of the plaintiff and said amendment to said petition and in rendering [fol. 58] judgment in favor of the defendant and against the plaintiff, as above set out, and requested that notice of its said intention so as to appeal to the Supreme Court of Oklahoma be entered by the court clerk of Oklahoma County, Oklahoma, on the clerk's minutes and on the trial docket of said court, as provided by law; and thereupon the court ordered and directed that entry of said notice of appeal be made in accordance with such request.

And, it appearing to the court that the time allowed by law is insufficient within which to make and serve a case-made on appeal to the Supreme Court herein, it is hereby



ordered that said plaintiff, The Texas Company, be allowed an extension of thirty (30) days in addition to the time provided by law, and, namely, until and including the 11th day of March, 1945, to make and serve a case-made on appeal to the Supreme Court in said cause, the defendant, Oklahoma Tax Commission, to have three days thereafter within which to suggest amendments to said case-made and the same to be signed and settled upon there (3) days' notice, in writing, by either party to the opposite party.

It Is Further Ordered that said plaintiff be and it is allowed until and including the 25th day of July, 1945, within which to file its petition in error, or proceedings in error, on appeal, in the Supreme Court of Oklahoma in this case. O. K. as to form:

(Signed) John R. Ramsey and B. W. Griffith,  
[fol. 59] Ames, Monnet, Hayes & Brown Attorneys for Plaintiff, The Texas Company.

O.K.

(Signed) C. W. King, Attorneys for Defendant, Oklahoma Tax Commission. (Signed) Lucius Babcock, Judge of District Court.

[File endorsement omitted.]

[fol. 60] [Statement as to contents of case-made omitted in printing]

[fol. 61] [Certificate of Attorneys omitted in printing]

[fol. 62] [Acknowledgment of service of transcript and case-made omitted in printing]

[fol. 63] [Notice of settlement of transcript and case-made omitted in printing]

[fols. 64-65] [Stipulation of Attorneys omitted in printing]

[fols. 66-67] Reporter's Certificates to foregoing transcript omitted in printing.

[fol. 68] Clerk's Certificate to foregoing transcript omitted in printing.



[fol. 69] IN THE DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

CERTIFICATE OF TRIAL JUDGE

STATE OF OKLAHOMA,

County of Oklahoma, ss.:

I, The undersigned Judge of The District Court of Oklahoma County, Oklahoma and within the Seventh Judicial District of the State of Oklahoma and the Trial Judge of the above entitled cause, do hereby certify that the above and foregoing was presented to me as a Transcript and Case-Made in the above entitled cause and due and legal service of the same having been made upon the attorneys of record for the above named defendant, as shown on the Acknowledgment of Service on Page 57 herein; and the attorneys for the plaintiff and the attorneys for the defendant having stipulated, as shown in the Stipulation of Attorneys on Page 59 and Page 60 herein, that the above and foregoing is a full, true, correct and complete Transcript and Case-Made herein and having waived the suggestion of amendments and stipulated that said Transcript and Case-Made should be signed by me immediately and without Notice; [fol. 70] - the same being a full, true, correct and complete Transcript and Case-Made, I now settle and sign the same as a full, true, correct and complete Transcript and Case-Made; and direct that it be attested and filed by the Clerk of said Court, according to law.

And the said plaintiff herein, to-wit: The Texas Company, a Corporation, is hereby granted permission to withdraw the same, after it has been attested and filed by the Clerk of said Court, for the purpose of attaching the same to its Petition in Error on Appeal to The Supreme Court of the State of Oklahoma.

Witness my hand, in Chambers, in the City of Oklahoma City, Oklahoma County, State of Oklahoma, on this, the 29 day of March, 1945.

Lewis Babcock, District Judge.

Attest: Cliff Myers, Court Clerk of Oklahoma County, State of Oklahoma, by W. H. Regean, Deputy. (Seal.)

Filed In Supreme Court of Oklahoma, Jul. 19, 1945. Vivian S. Payne, Clerk.



[fol. 71] IN THE SUPREME COURT OF OKLAHOMA

No. 32,270

THE TEXAS COMPANY, a Corporation, Plaintiff in Error,

vs.

OKLAHOMA TAX COMMISSION, Defendant in Error

Syllabus

I. A lessee producing oil from lands of restricted Kiowa and Apache Indians under departmental lease approved by and subject to supervision of the Secretary of the Interior of the United States, is engaged in the operation of a governmental instrumentality or agency and in the absence of permissive legislation by Congress, or appropriate Federal consent or waiver or withdrawal of immunity, the oil production or the oil is produced is not subject to the state excise tax of one-eighth of one cent per barrel, nor the state gross production tax of five per cent of the value of the oil produced.

Appeal from the District Court of Oklahoma County. Hon. Lucius Babcock, Judge

[fol. 72] Action by the Texas Company, a corporation, against the Oklahoma Tax Commission to recover certain oil excise taxes and gross production taxes paid under protest of illegality. From an order sustaining demurrer to plaintiff's petition and rendering judgment for defendant, the plaintiff appeals.

Reversed.

Amos, Monnet, Hayes and Brown of Oklahoma City, Okla. Y. A. Land, John R. Ramsey, B. W. Griffity, et al of Tulsa, Okla., for Plaintiff in Error.

E. L. Mitchell and C. W. King of Oklahoma City, Okla., for Defendant in Error.

OPINION—Filed September 23, 1947

WELCH, J.:

This action tests the validity of certain state tax assessments, gross production and oil excise tax, made against the Texas Company for oil production, under departmental



leases on restricted lands of Kiowa and Apache Indians. [fol. 73] The plaintiff, hereinafter referred to as "Company," paid the taxes under protest to the Oklahoma Tax Commission, (hereinafter referred to as "Commission,") and sued for recovery back. Plaintiff claimed there was legal immunity from such taxes because in the operation of such leases and in the production of such oil, "Company" was an instrumentality of the federal government.

That such a lease is an instrumentality of the federal government has been held in many cases hereinafter cited. Among the first such cases, if not the first, was Indian Territory Illuminating Oil Company v. Oklahoma, 240 U. S. 522, 60 L. ed. 779.

As applied to a gross production tax on oil, the exact contention of "Company" of immunity from such tax was sustained in Large Oil Co. v. Howard, 248 U. S. 549, 63 L. ed. 416, and in Howard v. Gypsy Oil Co., 247 U. S. 504, 62 L. ed. 1239.

And the United States Congress has acted on the theory that such immunity exists in the case of leases of this character unless waived. The Congress has adopted acts expressly waiving such immunity and granting to this State the authority to apply the gross production tax as to certain designated Indian lands, the Osage Indian Lands by act in 1921 (41 Stat. at L. 1250), the Kaw Indian Lands [fol. 74] by act in 1924 (43 Stat. at L. 176-177), and as to lands of the Five Civilized Tribes by act in 1928 (43 Stat. at L. 496.)

As applied to the oil excise tax the exact contention of immunity from such tax here made by "Company" has been sustained by this court in Barnsdall Refineries Inc., v. Oklahoma Tax Commission, 171 Okla., 145, 145 P. (2d) 918, affirmed in Oklahoma v. Barnsdall, 296 U. S. 521, 80 L. ed. 366.

Thus it has been established and for many years recognized in this court, in the Congress and in the Supreme Court of the United States, that in the case of such leases neither of the taxes here involved may be imposed without waiver of immunity or permissive legislation by the Congress.

But the "Commission" contends that, in foundation, the above rule rests upon other and former decisions of the Supreme Court of the United States dealing generally with



the "governmental instrumentality" rule, and that all such former decisions as well as those heretofore cited, were in effect overruled in *Helvering v. Mountain Producers Corp.*, 303 U. S. 376, 82 L. ed. 907.

Upon consideration of that point we observe the Mountain Producers case relates to income tax assessed against the net income or personal profit earned by a lessee in a position [fol. 75] similar to that of "Company".

Long prior to the Mountain Producers case, that court had extended the governmental instrumentality rule to include such personal income or profit within the tax immunity, and had held that income tax could not be assessed against such an oil and gas lessee. See *Gillespie v. Oklahoma*, 257 U. S. 501, 66 L. ed. 338, and *Burnett v. Coronado Oil and Gas Co.*, 285 U. S. 393 76 L. ed. 815.

The decision in the Mountain Producers cases was a reconsideration of that exact income tax question; and in the latter case that court held that such extension of the governmental-instrumentality rule was without adequate foundation or support, and that court expressly overruled the two former decisions, the Gillespie case and the Burnett case, and expressly held in the Mountain Producers case that the income tax might properly be assessed.

While that court thus specifically restricted the limits of the governmental instrumentality rule to that extent, we do not find in that decision any abolition of the rule, or any further departure from former application of the rule than is specifically made in and by that decision.

[fol. 76] The Mountain Producers case specifically overruled the two former income tax cases mentioned, but did not expressly overrule either of the gross production tax cases above cited nor the *Barnsdall* case, *supra*, nor indicate any specific intention of so doing.

It is the view of the writer of this opinion, speaking for himself alone, that for the reasons pointed out in the briefs one might well join in the request that the Supreme Court of the United States reconsider this question as applied to a tax on the oil as it did reconsider the question as applied to the tax on the personal income or net profit of the oil producer, which consideration resulted in a reversal of the rule as to such income tax as we have noted. But it is thought beyond the power of this court to now engage in such reconsideration, in view of the cited decisions of the



higher authority which thus far wholly sustain the claim of "Company" to immunity from the tax here involved.

Upon questions of federal law, citizens and their attorneys have the right to rely upon decisions of the Supreme Court of the United States, and upon such questions it is our fixed duty to follow such decisions, leaving to the United States Congress or Supreme Court the making of the necessary changes in such legal rules.

[fol. 77] In a later case, *United States v. County of Allegheny*, 322 U. S. 174, 88 L. ed. 1209, the Supreme Court of the United States recognized that in the *Mountain Producers* case the rule of implied immunity had been "sharply curtailed," but that is not to say an abolition of the rule, but a limitation or curtailment thereof, definitely leaving the balance thereof in full force.

Other authorities are cited to support the view of "Commission" as to the implied or extended effect to be given the *Mountain Producers* decision. We have considered them but find further discussion of them not necessary, other than to say that we cannot construe the decision in the *Mountain Producers* case to go to the extent contended for.

We regard the decisions of the Supreme Court of the United States, *supra*, as binding upon us, and in view thereof the plaintiff's petition stated a cause of action. It was error to sustain a demurrer thereto.

The judgment for defendant is reversed, with directions to overrule the demurrer to plaintiff's petition and proceed consistent with the views here expressed.

Hurst, C. J.; Davison, V. C. J.; Riley, Gibson and Luttrell, JJ., Concur.

Corn, J. dissents.

[fol. 78] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING—Filed October 6, 1947.

Comes now the Oklahoma Tax Commission, defendant in error, and respectfully represents to the court that on the



23rd day of September, 1945, a decree and judgment was rendered by this Court in said cause holding:

"1. A lessee producing oil from lands of restricted Kiowa and Apache Indians under departmental lease approved by and subject to supervision of the Secretary of the Interior of the United States, is engaged in the operation of a governmental instrumentality or agency and in the absence of permissive legislation by Congress, or appropriate Federal consent or waiver or withdrawal of immunity, the oil production or the oil as produced is not subject to the state excise tax of one-eighth of one cent per barrel, nor the state gross production tax of five per cent of the value of the oil produced."

(1) That said decision overlooked a question decisive of the case, and duly submitted by counsel as follows:

That in order for a burden on an instrumentality of the Government to inhibit the collection of a uniform tax, such burden must be direct and substantial and actually hinder the operation of functions of the State Government in the performance of its duties.

(2) That said decision is in conflict with the law, both State and Federal, to which the attention of the Court has not been called, either in brief or oral argument, or which has been overlooked by the court to the effect that theoretical burdens or governmental instrumentalities or agencies are no longer recognized by the Supreme Court of the United States to the extent that same prevents a state from levying and collecting the ordinary tax applying to other like persons.

(3) That the said decision is erroneous in that it wrongfully and unlawfully deprives the State of Oklahoma of the exercise of the highest sovereign power, that of the power to raise revenues for the support of the state government which said power is supreme and cannot be impinged, curtailed or denied to the sovereign state on account of the laws, rules, regulations or other processes of the federal government. The court overlooked the fact that oil companies pay the same price for restricted leases for the production of oil, gas and other minerals in the State of



Oklahoma that is paid for nonrestricted leases, and therefore, the Indian, the ward of the government, is not penalized by the oil or gas developing contract or lease because of his restrictions. In most instances, as this court knows from common knowledge, the oil leases are initially bought by brokers or oil scouts depending solely upon the oil producing expectancy and at the time they are bought and the purchase price is made, it is not known whether or not a given lease is taxable or non-taxable and therefore, the identical consideration for the annual lease money or bonus is paid for the lease on the restricted area as on the non-restricted tract.

Wherefore, defendant in error prays that a rehearing of said cause may be granted by this Honorable Court and that the same be set down for oral argument and permission given to resubmit the questions involved to the consideration [fol. 81] of the Court; that upon such consideration, the case be reversed.

Mac Q. Williamson, Attorney General; Fred Hansen, First Assistant Attorney General; C. W. King, General Counsel, Oklahoma Tax Commission, Attorneys for Defendant in Error.

[fol. 82]

#### AFFIDAVIT OF MAILING

STATE OF OKLAHOMA,

Oklahoma County, ss:

Lucile Williams being duly sworn on oath, deposes and says that on the 6th day of October 1947, she enclosed a copy of the attached Petition for Rehearing in an envelope addressed to: Ames, Monnet, Hayes and Brown, Attorneys at Law, First National Building, Oklahoma City, Oklahoma, with postage thereon fully prepaid, and deposited the same in the United States post office at the State Capitol, in Oklahoma City, Oklahoma.

Lucile Williams.

[fol. 83] Subscribed and sworn to before me this 6th day of October, 1947. Effa Alexander, Notary Public. My Commission Expires October 28, 1948. (Seal.)



[fol. 83a] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

ORDER DENYING PETITION FOR REHEARING—Filed January 27, 1948

The clerk is hereby directed to enter the following orders:

32270—The Texas Company v. Oklahoma Tax Commission.  
Petition for Rehearing is denied:

Thurman S. Hurst, Chief Justice.

[fol. 84] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

MOTION FOR FINAL DECISION, ETC.—Filed November 25, 1947

Comes now the defendant in error, Oklahoma Tax Commission, and shows to the court that this action is ruled by one question of law and which is based on a fact status which is not in controversy.

The plaintiff, The Texas Company, in its petition and briefs allege as a matter of fact that the oil and gas mining leases set out in said petition are what are commonly known and recognized as departmental leases executed under the supervision and according to rules and regulations promulgated by the Secretary of the Interior; that the lands or lease holds from which the oil and gas defined in plaintiff's petition were produced, are restricted Indian lands within the definition and meaning of that term as used by the oil industry and the United States Department of Interior. That the allegations of fact of plaintiff's petition with reference to the restricted nature of the oil and gas leases involved are not denied by the Oklahoma Tax Commission.

[fol. 85] The defendant in error, Oklahoma Tax Commission (without prejudice to its petition for rehearing on file in this court) therefore, moves the court that should a rehearing not be granted and the present opinion of the court adhered to, that the opinion be so modified that it will not be remanded to the District Court for a further trial and fresh judgment which said second judgment would likely



be appealed to this court and a long period of time would be vainly consumed and the energy of both counsel and the courts uselessly occupied in such proceeding, that in lieu thereof, this court do find the facts as herein admitted and render a final judgment from which an appeal can be prosecuted to the Supreme Court of the U.S. directly from the decision of this court.

It is, of course, the contention of the defendant in error, Oklahoma Tax Commission, that the restrictions upon alienation of the land by the Indian owner do not operate to render the proceeds from the sale of oil and gas from such leases immune or exempt to the Texas Company, lessee and operator from the payment of the gross production taxes of 5% which said taxes are in lieu of ad valorem taxes on the oil and gas produced, the lease hold and appliances employed in the production of said oil and gas, and that this motion shall not be construed to contain any admission which prevents the defendant in error from thoroughly presenting all matters other than the question of fact herein admitted and is without prejudice to plaintiff's presentation of the legal question involved, to-wit: The taxability of the oil and gas produced from the leases in question.

[fol. 86] Oklahoma Tax Commission, by Mac Q. Wilkerson, Attorney General; Fred Hansen, First Asst. Attorney General; C. W. King, General Counsel for Oklahoma Tax Commission.

C. W. King, being first duly sworn says that on the 24th day of November, 1947, he served a copy of this motion on the attorney of record, B. W. Griffith, Legal Department of the Texas Company, Tulsa, Oklahoma, by mailing him properly addressed, postage prepaid a true copy of said motion.

C. W. King, General Counsel.

Subscribed and sworn to before me this 24 day of November, 1947. Effa Alexander, Notary Public.  
My Commission expires 10-28-48. (Seal.)



[fol. 87] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 32,270

THE TEXAS COMPANY, a Corporation, Plaintiff in Error,

vs.

OKLAHOMA TAX COMMISSION, Defendant in Error

ORDER CORRECTING OPINION—Filed January 22, 1948

It is ordered that the opinion filed herein on September 23, 1947, be, and the same is corrected in the following two particulars, to-wit:

I. That on the Caption Sheet the word "Reversed" is stricken and in lieu thereof the following words are inserted, to-wit: "Trial Court Judgment for Defendant Reversed and Judgment Rendered for Plaintiff."

II. The last paragraph of the opinion is hereby stricken and in lieu thereof the following paragraph is inserted to-wit:

[fol. 88] "The trial court judgment for defendant is reversed.

And since there is no question as to the aforesaid facts, which are alleged by plaintiff and admitted by defendant, final judgment is hereby rendered for plaintiff and against the defendant for the sum sued for. The cause is remanded with directions to the trial court that such judgment be duly entered of record."

Done by order of the Court in conference this 22 day of January, 1948.

Thurman S. Hurst, Chief Justice.



[fol. 89]

[File endorsement omitted]

## IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

**MOTION FOR ORDER STAYING MANDATE**—Filed January 29, 1948

Comes now the defendant in error, Oklahoma Tax Commission, in the above entitled cause, and respectfully shows to the court that defendant in error desires to appeal to the Supreme Court of the United States from the decision of this court rendered herein on the 22nd day of January, 1948, and from order overruling petition for rehearing entered January 27, 1948, and that said defendant in error, Oklahoma Tax Commission, desires that the mandate in said cause be stayed pending such appeal.

Wherefore, defendant in error, Oklahoma Tax Commission, prays the court to enter an order herein staying the mandate in said above styled cause pending the appeal herein of defendant in error to the Supreme Court of the United States.

Mac Q. Williamson, Attorney General; Fred Hansen, Assistant Attorney General; C. W. King, General Counsel for Oklahoma Tax Commission, Attorneys for Defendant in Error.

[fol. 90]

## AFFIDAVIT OF MAILING

STATE OF OKLAHOMA,

Oklahoma County, ss:

C. W. King, being first duly sworn upon his oath states that he is one of the attorneys for the above named defendant in error; that on January 29, 1948, he enclosed a copy of the above Motion to Stay Mandate in an envelope addressed to Mr. B. W. Griffith, one of the attorneys for the above named plaintiff in error, at his office in care of the Legal Division of the Texas Company, Philtower Building, Tulsa, Oklahoma, and deposited the same, with postage

thereon paid, in the United States Post Office at Oklahoma City, Oklahoma.

C. W. King.

Subscribed and sworn to before me this 29th day of January, 1948. Ann Fannier, Notary Public. My Commission Expires: Apr. 8, 1950. (Seal)

[fol. 91] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

ORDER STAYING MANDATE—Filed February 10, 1948

The Clerk is hereby directed to enter the following orders:

32-270—The Texas Co. v. Oklahoma Tax Commission.

32,678—Magnolia Petroleum Co. v. Oklahoma Tax Commission.

Ordered that mandate in the above styled causes be stayed until April 29, 1948, pending appeal to the U. S. Supreme Court, and thereafter until Final disposition by that Court if appeals are perfected within time allowed.

Tharman S. Hurst, Chief Justice.

[fol. 92] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL AND PRAYER FOR REVERSAL—Filed February 18, 1948

To the Honorable Chief Justice of the Supreme Court of the State of Oklahoma:

Your appellant in the above entitled cause, and appellees and defendant in error in the cause in the Supreme Court of Oklahoma, hereinafter referred to, considering themselves aggrieved by the final decision and judgment of the Supreme Court of Oklahoma, entered on the 23rd day of September, 1947, (motion for modification having been



filed on November 25, 1947, an order correcting opinion on January 22, 1948, and petition for rehearing being denied January 27, 1948, motion to stay mandate dated January 29, 1948, and order staying mandate pending appeal to the United States Supreme Court dated January 29, 1948,) which said judgment became final upon the overruling of petition for rehearing on the 27th day of January, 1948, in the cause entitled:

"The Texas Company, a corporation, plaintiff in error, vs. Oklahoma Tax Commission, defendant in error, No. 32270,"

[fol. 93] on the docket of said court, reversing the order and judgment of the District Court of Oklahoma County, Oklahoma, hereby file its petition for an appeal from said decision and judgment to the Supreme Court of the United States.

In the above entitled cause in the Supreme Court of Oklahoma there is drawn in question the validity of statutes of the State of Oklahoma, to-wit: Sections 821 to 843 inclusive, Ch. 20, Title 68, Okla. Stat. 1941, as amended by Ch. 20, 1947, Supl. to Stat. 1941, on the ground of said statutes being invalid as applied to the plaintiff in error below and the appellee herein and in violation of the Acts of Congress, which the appellee urged operated to make exempt and immune production of oil and gas from restricted Indian leases, particularly the General Allotment Act of the United States of America, approved February 8, 1887, Chapter 119, 24 Statute, 388 and Acts amendatory thereof, and the Act of Congress March 3, 1935, Ch. 781 and 783, that the said 7/8 working interest of the Texas Company, lessee of restricted Indian lands, was immune from taxation by the State of Oklahoma and that the state's efforts to collect a gross production tax from said lessee, the Texas Company, was in violation of the 14th Amendment of the Constitution of the United States of America in that said leases constituted an instrumentality of the Government of the United States and were, therefore, exempt and immune from state [fol. 94] taxation. The judgment and decision of the Supreme Court of Oklahoma sustained said position of the taxpayer and held said tax invalid in contravention of the Acts of Congress as interpreted by the decision of this court and such decision operated to deprive the State of Okla-

homa as represented by the Oklahoma Tax Commission as its officers and agents, of the right to levy and collect the gross production tax on oil and gas derived from the operation of the said Texas Company, lessee, from the restricted Indian oil lands which said decision denied to the State of Oklahoma and the appellant herein, its sovereign rights guaranteed under the Enabling Act admitting the State of Oklahoma to statehood and the provisions of the State Constitution of Oklahoma, adopted pursuant thereto, and violates the rights of the State of Oklahoma as guaranteed under the Constitution of the United States in that it deprives the State of Oklahoma of its sovereign power of taxation as related to the subject matter of this litigation; that said decision is repugnant to treaties and laws of the United States relating to the Osage Tribe of Indians and should be reviewed by this court on appeal.

The decision and final judgment of the Supreme Court of Oklahoma herein appealed from, were in favor of the validity of the said Statute of the State of Oklahoma as applied to the oil and gas produced from restricted Indian lands by the Texas Company as lessee.

[fol. 95] The Supreme Court of Oklahoma is the highest court of the State of Oklahoma in which a decision of the suit could be had.

Appellant shows that this case is one in which under the legislation in force to-wit: Sec. 237(a) of the Judicial Code, as amended by the Act of February 13, 1925, and the Act of January 31, 1928 (28 U.S.C. Secs. 344(a), and 861(a), a review may be made in this court as a matter of right by appeal.

This appeal is accompanied by an assignment of errors setting forth the grounds that the decision and judgment of the Supreme Court of Oklahoma should be reversed and a statement particularly disclosing the basis on which it is contended that the Supreme Court of the United States has jurisdiction to review said decision and judgment of the Supreme Court of Oklahoma.

Wherefore, your appellant prays that an appeal may be allowed herein from the Supreme Court of Oklahoma to the Supreme Court of the United States in order that said decision and judgment of the Supreme Court of Oklahoma may be examined and reversed; that a transcript of the material part of the record in said cause, duly authenticated, may be



ordered to be prepared and certified to the Supreme Court of the United States as provided by law; that an order may be made fixing the security to be required of appellant (or excepting appellant from such requirement on the ground that this is a suit for and on behalf of the State of Oklahoma); that such security for cost as may be required in lieu of bond and tendered herewith may be approved; and that there be issued to appellee a citation directing said appellee to appear in the Supreme Court of the United States at Washington, D. C., within forty days from the date hereof and there show cause, if any there be, why said decision and judgment should not be reversed and a speedy justice be done the parties in that behalf.

Mac Q. Williams, Attorney General; Fred Hansen,  
Asst. Attorney General; C. W. King, General Counsel,  
Oklahoma Tax Commission.

STATE OF OKLAHOMA,

Oklahoma County, ss:

Service of the foregoing petition for appeal was made upon counsel of record for the Texas Company, plaintiff in error herein and appellee in this appeal by depositing in the United States Post Office at Oklahoma City, postage prepaid, a copy of this petition clearly addressed to said counsel to-wit: B. W. Griffith, Legal Division, Texas Company, Philtower Building, Tulsa, Oklahoma, on this 18 day of February, 1948.

C. W. King.

Subscribed and sworn to before me the undersigned notary public this 18 day of February, 1948. M. V. Kloffenstein, Notary Public. My commission expires: Feb. 11, 1951. (Seal.)

[fol. 97] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed February 18, 1948

The appellant, Oklahoma Tax Commission, for its assignment of error herein says that the Supreme Court of Okla-

homa in its decision and judgment in the cause entitled: "The Texas Company, a corporation, plaintiff in error, vs. Oklahoma Tax Commission, defendant in error, No. 32270," erred in its order and decision reversing the judgment of the District Court of Oklahoma County, Oklahoma, in case No. 106796, wherein the trial court sustained the demurrer of the Oklahoma Tax Commission against the petition of the plaintiff, Texas Company, seeking to recover the gross production taxes paid under protest.

Upon review of such order and judgment of the Oklahoma District Court, the Supreme Court of Oklahoma erred in each of the following particulars and in each particular, appellant was deprived of its just rights on behalf of the State of Oklahoma and was denied the exercise of the sovereign powers of taxation guaranteed under the Constitution of the United States:

[fol. 98] (1) The Supreme Court of Oklahoma erred in reversing the order and judgment of the Oklahoma County District Court for the reason that the action of the trial court in holding the Oklahoma Statute levying gross production tax on oil, gas and other minerals did not apply to the 7/8 working interest in the oil and gas produced by the Texas Company and belonging to it for the reason that the said production came from so-called restricted Indian lands.

(2) Said court erred in reversing the order and judgment of the Oklahoma County District Court for the reason that the United States Government has no title, ownership or property interest in the subject matter of this litigation which renders the levying and the collection of the Oklahoma gross production tax on oil and gas an unlawful burden on any agency or instrumentality of the United States Government in that the levying and collection of said tax in no wise burdens the Government of the United States directly or indirectly.

(3) The Supreme Court of Oklahoma erred in reversing the said judgment of the District Court of Oklahoma County by holding "A lessee producing oil from lands of restricted Kiowa and Apache Indians under departmental lease approved by and subject to supervision of the Secretary of the Interior of the United States, is engaged in the operation of



a governmental instrumentality or agency and in the absence of permissive legislation by Congress, or appropriate Federal consent or waiver or withdrawal of immunity, the [fol. 99] oil production or the oil as produced is not subject to the state excise tax of one-eighth of one cent per barrel, nor the state gross production tax of five per cent of the value of the oil produced."

(4) The Supreme Court of the State of Oklahoma erred in reversing the judgment of the Oklahoma County District Court in holding that the departmental leases described in plaintiff's petition constituted such Federal agencies or instrumentalities, the taxing of which would burden the arm of the Federal Government in the administration of the affairs of the Indian and thereby impair his fortune and thereby further weaken the arm of the Federal Government in discharging an obligation to its ward.

(5) The Supreme Court of Oklahoma erred in refusing to hold upon the urgency of the appellant, Oklahoma Tax Commission, that the Texas Company could not be heard and had no standing in court to maintain an action for the recovery of taxes based upon the theory that to tax the oil company on its oil and gas production from an Indian lease would burden not the Indian nor the oil company but would burden the United States Government by impinging upon the exercise of the government over a federal agency or instrumentality.

(6) The judgment and decision of the Supreme Court of Oklahoma reversing the judgment of the trial court was erroneous in that it applied the federal instrumentality or federal agency doctrine of inhibition against the State of [fol. 100] Oklahoma and the Oklahoma Tax Commission after all of the cases, both state and federal, so applying such doctrine as to arrest the taxing power of the state in that particular had been either directly or by plain implication overruled by the Supreme Court of the United States.

(7) The judgment of the Supreme Court of the State of Oklahoma was erroneous and prejudicial and damaging to the interest of the State of Oklahoma and the Oklahoma Tax Commission in that it deprived the state of its sovereign taxing power guaranteed under the treaty of the Louisiana

Purchase and further guaranteed by the Constitution of the United States and for the further reason that the said decision of the Supreme Court of Oklahoma places the State of Oklahoma in a position of inferiority and impotency as compared with the sister states of the union in that to so deprive the State of its sovereign taxing power operates to deprive said State of its admission to and place in the union of the United States on an equal basis with the original thirteen states.

(8) The opinion of the Supreme Court of the State of Oklahoma and its decree were erroneous and prejudicial to the rights of the State of Oklahoma and the Oklahoma Tax Commission, appellant herein, in that said opinion incorrectly and erroneously construed the Acts of Congress and [fol. 101] the decision of the State and Federal Court, including recent cases of the Supreme Court of the United States, in which the doctrine of federal instrumentality and federal agency has been modified so that in order for a taxpayer to avoid taxes on such ground, it must be shown that the tax in point of fact as opposed to theory actually and substantially burdens the arm of the government of the United States in administering such instrumentality or agency and that it is not enough to merely show that the subject of taxation or object of taxation is comprised of property over which the government is exercising a form of superintendence and supervision.

For each of the errors specified above and because in each of said respects, the said judgment of the Supreme Court of Oklahoma in reversing the order and judgment of the District Court, deprives appellant and the State of Oklahoma of its property without due process of law, and deprives to each protection of the law and denies the exercise of equal sovereign powers with the other states in violation of the treaty of the Louisiana Purchase and the provisions of the Constitution of the United States, and because said judgment violates the General Allotment Act and the various other Acts of Congress allotting to said Indians involved and properties from which the oil and gas, the subject of taxation involved herein, was produced, and for such reason appellant prays that said decision [fols. 102-110] and judgment be reviewed by the Supreme Court of the United States and be there reversed and judg-



ment rendered in favor of the appellant, Oklahoma Tax Commission, on behalf of the State of Oklahoma.

Mac Q. Williamson, Attorney General; Fred Hansen, Asst. Attorney General; C. W. King, General Counsel, Oklahoma Tax Commission.

STATE OF OKLAHOMA,

Oklahoma County, ss:

Service of the foregoing assignment of errors was made upon counsel of record for the Texas Company, plaintiff in error herein and appellee in this appeal by depositing in the United States Post Office at Oklahoma City, postage prepaid, a copy of this petition clearly addressed to said counsel to-wit: B. W. Griffith, Legal Division, Texas Company, Philtower Building, Tulsa, Oklahoma, on this 18 day of February, 1948.

C. W. King, General Counsel, Oklahoma Tax Commission,

Subscribed and sworn to before me the undersigned notary public this 18 of February, 1948. M. V. Kloffenstein, Notary Public. My Commission expires: Feb. 11, 1951.

[fol. 111] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed February 18, 1948

The petition of the Oklahoma Tax Commission for an appeal in the above case (being case No. 32270, styled the Texas Company, a corporation, plaintiff in error, vs. Oklahoma Tax Commission, defendant in error, upon the docket of the Supreme Court of the State of Oklahoma) to the Supreme Court of the United States from the Supreme Court of the State of Oklahoma, and the assignment of error and the jurisdictional statement required by the rules of the Supreme Court of the United States having been filed herewith, and having been presented, and having been considered, together with the record of said cause, it is

[fol. 112] Ordered, that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Oklahoma, as prayed in said petition, and that the Clerk of the Supreme Court of the State of Oklahoma prepare and certify a transcript of the record and proceedings in the above cause and transmit to the Supreme Court of the United States so that same shall be delivered to said court within forty days from the date thereof.

And the appellant, having presented to the Chief Justice of the Supreme Court of Oklahoma, good and sufficient security for cost, condition that appellant prosecute such appeal to effect (or having been excepted from the rule requiring security on account of said cause being prosecuted on behalf of the State of Oklahoma) and that if said appellant fails to make their plea good, they shall answer and pay all cost; and said bond or security for cost having been declared unnecessary in this case on account of said case being prosecuted on behalf of the State of Oklahoma in its sovereign capacity, no cost bond or other like security having been deemed necessary, none is required.

The appeal shall operate as a supersedeas, and the mandate of this court is hereby stayed and the effectiveness of the judgment and order appealed from is hereby stayed pending the final determination of said appeal.

Dated this the 18 day of February, 1948.

Thurnian S. Hurst, Chief Justice of the Supreme  
[fol. 113] Court of Oklahoma. (Seal.)

Attest: Andy Payne, Clerk.

STATE OF OKLAHOMA,

Oklahoma County, ss:

C. W. King of lawful age being first duly sworn deposes and says, that he served the foregoing order upon the counsel of record for the Texas Company, plaintiff in Error, in this court and appellee in the Supreme Court of the United States by depositing in the Post Office at Oklahoma City, with the correct amount of postage thereon, a letter containing a copy of said order correctly addressed to said counsel to-wit: B. W. Griffith, Legal Division, Texas Company, Philtower Building, Tulsa, Oklahoma.

C. W. King. (Seal.)



Subscribed and sworn to before me this 18 day of February, 1948. M. V. Kloffestem, Notary Public. My Commission expires: Feb. 11, 1951. (Seal.)

[fols. 114-117] Citation in usual form showing service on B. W. Griffith, filed Feb. 18, 1948, omitted in printing.

[fol. 118] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed February 18, 1948.

To the Clerk of the Above Named Court:

You are hereby requested to make a transcript of the record in the above styled and numbered cause to be filed in the Supreme Court of the United States pursuant to an appeal allowed in said cause, and to include in such transcript of the record the following, and no other, papers and exhibits, to-wit:

A full and complete transcript of the record certified to the Supreme Court of Oklahoma by the District Court under date of March 29, 1945, and filed in the Supreme Court of Oklahoma, with petition in error attached, on July 19, 1945, including the following:

[fol. 119] 1. Petition in error, attached in front of page 1.

2. Petition of plaintiff in error here—including Exhibit A—with statement that same is typical of like Exhibits B and C.

3. Amendment to plaintiff in error's petition—42-45.

4. Summons and service thereof 35-37.

5. Demurrer to petition as amended—38-39.

6. Journal Entry of Judgment—50-54.

7. Statement as to contents of case-made—55.

8. Certificate of Attorneys as to true transcript of record—56.

9. Stipulations of attorneys as to record—59-60.
10. Certificate of Trial Judge—64-65.
11. Notice of intention to file suit for recovery of taxes—26-31.
12. Opinion of the Supreme Court pg. —.
13. Petition for Rehearing—pg. —.
14. Motion of Defendant in Error, Oklahoma Tax Commission, admitting the restricted nature of the property and asking the Supreme Court to render final decision instead of remanding case to lower court for further proceedings. pg. —.
15. Final opinion and Decision of the Supreme Court pg. —.
16. Motion for Stay of Mandate—pg. —.
17. Order Staying Mandate—pg. —.
18. Petition for Appeal and Prayer for Reversal with Proof of Service—pg. —.
- [fols. 120-122] 19. Assignment of Errors with Proof of Service—pg. —.
20. Jurisdictional Statement with Proof of Service—pg. —.
21. Order Allowing Appeal with Proof of Service—pg. —.
22. Citation to Appellee with Proof of Service—pg. —.
23. Praeipe for Transcript of Record with Proof—pg. —.
24. Statement of Points to be Relied upon, with Proof of Service—pg. —.
25. A full, complete and accurate index of the record required by this praecipe—pg. —.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the Supreme Court of the United States; and to be filed in the office of the Clerk of the Supreme Court of the United States on or before the 29th day of April, 1948.

Mac Q. Williamson, Attorney General; Fred Hansen, First Asst. Attorney General; C. W. King, General Counsel, Oklahoma Tax Commission.

[fol. 123] STATE OF OKLAHOMA,

Oklahoma County, ss:

C. W. King of lawful age first being duly sworn deposes and says that he deposited in the Post Office at Oklahoma



City, with correct amount of postage thereon, a copy of this Praecept addressed to B. W. Griffith, Legal Division, Texas Company, Philtower Building, Tulsa, Oklahoma, on this the 21st day of February, 1948.

C. W. King.

Subscribed and sworn to before me this 21 day of February, 1948. M. V. Klopfenstein, Notary Public. My Commission expires Feb. 1. 1951. (Seal.)

[fol. 124] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 125] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED ON—Filed April 10, 1948

In this appeal the appellant, Oklahoma Tax Commission, states that it intends to rely on the following enumerated points:

1. The taxes imposed and by appellee protested are: (1) A nondiscriminatory gross production tax in an amount equal to five per centum of the gross value of the oil, gas, and casinghead gas produced, but not to exceed what otherwise would be the rate for ad valorem purposes if subjected to that tax, the tax being levied in lieu of all other taxes on the oil, gas, casinghead gas and all appliances, tools and machinery directly used and employed in the production; (2) A nondiscriminatory excise tax of  $\frac{1}{8}$  of 1¢ per barrel on all oil produced.

(a) The properties from which the oil and gas was produced lie wholly within the State of Oklahoma and all acts necessary in producing the oil, gas and casinghead gas were performed in Oklahoma.

(b) The validity and constitutionality of the statutes under which the taxes were imposed have been sustained by the Supreme Court of Oklahoma. In denying the State of [fol. 126] Oklahoma its inherent sovereign right to impose

and collect the taxes above referred to, on the oil, gas and casinghead gas produced and accruing to the  $\frac{7}{8}$  working interest of appellee under the departmental leases covering the lands of restricted Indians, including among which lands are lands in which non-Indians owned an undivided interest in the  $\frac{1}{8}$  royalty interest, the Supreme Court of Oklahoma has violated the inherent sovereign and constitutional rights of the State of Oklahoma as one of the sovereign states of the Union to levy and collect taxes on subjects wholly within her jurisdiction.

2. The United States had and held no right, title, interest or ownership in and to the  $\frac{7}{8}$  working interest held and owned by appellee or in and to the production accruing to said interest. Therefore, an imposing of the taxes in controversy did not constitute a taxing of properties of the United States.

3. An imposing of the tax will not burden or effect the property rights of any restricted Indian and his accruals from the oil, gas and casinghead gas produced will neither be lessened nor diminished.

4. The fact that appellee operated and produced oil and gas under departmental leases from wells located on the lands of restricted Indians, did not make and constitute it a United States agency or a federal instrumentality. The appellee was a private corporation and its business of operating and producing the oil, gas and casinghead gas was a private business.

5. An imposing of the taxes in controversy will not directly burden, interfere with or hinder the United States Government in carrying out its supervisory functions in connection with the properties of any restricted Indian. The effect of imposing the tax, if any, is indirect, inconsequential and remote.

6. An imposing of the tax will not deprive the appellee of the power to serve the United States Government as it was intended that it should serve, or hinder or deter it in so serving.

7. Non-Indians owned a fractional interest and part of the  $\frac{1}{8}$  royalty interest. The production accruing to those interests and the relationship that those interests bore to



ward the appellee had no possible connection with any theory of federal instrumentality or federal agency.

Joe M. Whitaker, R. F. Barry, Attorneys for Appellants.

[fol. 128] ACKNOWLEDGMENT OF SERVICE

Personal service of a true and correct copy of the foregoing motion, entitled "Statement of Points to be Relied On," is acknowledged to have been made on me this 7th day of April, 1948.

B. A. Ames, Y. A. Land, B. W. Griffith, Attorneys for Appellee.

[fol. 129] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—  
Filed April 10, 1948

The Oklahoma Tax Commission, appellant in the above styled and numbered cause, respectfully requests that all portions of the record heretofore filed herein be printed, omitting only those portions thereof that it is provided in sub-section 9 of Rule No. 13 of the above named court, may be omitted.

Joe M. Whitaker, R. F. Barry, Attorneys for Oklahoma Tax Commission.

[fol. 130] ACKNOWLEDGMENT OF SERVICE

Personal service of a true and correct copy of the foregoing motion, entitled "Designation of the Parts of the Record to be Printed", is acknowledged to have been made on me this 7th day of April, 1948.

B. A. Ames, Y. A. Land, B. W. Griffith, Attorneys for Appellee.

[fol. 130a] [File endorsement omitted.]

[fol. E34] SUPREME COURT OF THE UNITED STATES

[Title omitted]

Appeal from the Supreme Court of the State of Oklahoma

ORDER DISCUSSING APPEAL AND GRANTING APPLICATION FOR  
WRIT OF CERTIORARI—April 19, 1948

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of Oklahoma, and was duly submitted.

On consideration whereof, It is now here ordered by this Court that the appeal herein be, and the same is hereby, dismissed for the want of jurisdiction.

Treating the appeal papers herein from the Supreme Court of the State of Oklahoma as an application for a writ of certiorari;

On Consideration Whereof, it is ordered by this Court that the said application for writ of certiorari be, and it is hereby, granted. The case is consolidated with No. 704 for argument. The Solicitor General is requested to file a brief as *amicus curiae*.

Endorsed on Cover: File No. 52,933, Oklahoma, Supreme Court. Term No. 703. Oklahoma Tax Commission, Petitioner, vs. The Texas Company. Filed March 30, 1948. Term No. 703 O. T. 1947.

(6720)





3 page  
**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1948**

**No. 41**

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**OKLAHOMA TAX COMMISSION, PETITIONER,**

*vs.*

**MAGNOLIA PETROLEUM COMPANY**

---

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF OKLAHOMA**

---

**PETITION FOR CERTIORARI FILED MARCH 30, 1948.**

**CERTIORARI GRANTED APRIL 19, 1948.**



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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 41

OKLAHOMA TAX COMMISSION, PETITIONER,

vs.

MAGNOLIA PETROLEUM COMPANY

WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF OKLAHOMA

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[fol. 1] [File endorsement omitted]

**IN THE SUPREME COURT OF OKLAHOMA**

No. 32678

**MAGNOLIA PETROLEUM COMPANY, a Corporation, Plaintiff  
in Error,**

vs.

**THE OKLAHOMA TAX COMMISSION, Defendant in Error**

PETITION IN ERROR—Filed June 26, 1946

Comes now Magnolia Petroleum Company, a corporation, plaintiff in error herein, and shows to this Honorable Court that on May 28, 1946, in a proceeding pending before the Oklahoma Tax Commission, being Cases No. 1748, No. 1749, No. 1750 and No. 1751 on the docket of said Tax Commission (said cases having been consolidated for the purpose of the hearing), in which the said Tax Commission proposed to levy gross production and proration taxes against the interests of the Magnolia Petroleum Company in the oil and gas leases involved in said cases, an order and judgment was made and entered with respect to said consolidated cases, finding and ordering that Magnolia Petroleum Company owed and should pay gross production and proration taxes, with interest and penalty thereon, in the total sum of \$51,266.94 in said cases. That, pursuant to the laws of the State of Oklahoma, your Petitioner herein, the protestant before said Tax Commission, paid under protest the amount found to be due, and duly served notice of appeal upon the said Tax Commission; that there is attached hereto and filed herewith a true and correct transcript of the proceedings had before the Oklahoma Tax Commission, including all pleadings and instruments filed therein, testimony, exhibits and stipulations.

That said transcript of the proceedings shows that the following errors were committed by the Tax Commission, and the same are assigned as errors on this appeal, to-wit:

That the oil and gas leases involved in Case No. 1748 are so-called Departmental leases, covering restricted In-



dian lands, and the plaintiff in error, as lessee and operator of said leases, and the leases themselves are Federal instrumentalities, and the Oklahoma Gross Production Tax Law, as applied by said Tax Commission in its order appealed from herein, contravenes the Constitution of the United States and is, therefore, invalid.

[fol. 3].

2

That the oil and gas lease involved in Case No. 1749 is a so-called Departmental lease, covering restricted Indian lands, and the plaintiff in error, as lessee and operator of said lease, and the lease itself are Federal instrumentalities, and the Oklahoma Gross Production Tax Law, as applied by said Tax Commission in its order appealed from herein, contravenes the Constitution of the United States and is, therefore, invalid.

3

That the oil and gas lease involved in Case No. 1750 is a so-called Departmental lease, covering restricted Indian lands, and the plaintiff in error, as lessee and operator of said lease, and the lease itself are Federal instrumentalities, and the Oklahoma Gross Production Tax Law, as applied by said Tax Commission in its order appealed from herein, contravenes the Constitution of the United States and is, therefore, invalid.

4

That the oil and gas lease involved in Case No. 1751 is a so-called Departmental lease, covering restricted Indian lands, and the plaintiff in error, as lessee and operator of said lease, and the lease itself are Federal instrumentalities, and the Oklahoma Gross Production Tax Law, as applied by said Tax Commission in its order appealed from herein, contravenes the Constitution of the United States and is, therefore, invalid.

[fol. 4]

5

That the oil and gas leases involved in Case No. 1748 are so-called Departmental leases covering restricted Indian lands, and the plaintiff in error, as lessee and operator of said leases, and the leases themselves are Federal in-

strumentalities, and the Oklahoma Proration Tax Law, as applied by the said Tax Commission in its order appealed from herein, contravenes the Constitution of the United States and is, therefore, invalid.

## 6

That the oil and gas lease involved in Case No. 1749 is a so-called Departmental lease covering restricted Indian lands, and the plaintiff in error, as lessee and operator of said lease, and the lease itself are Federal instrumentalities, and the Oklahoma Proration Tax Law, as applied by the said Tax Commission in its order appealed from herein, contravenes the Constitution of the United States, and is, therefore, invalid.

## 7

That the oil and gas lease involved in Case No. 1750 is a so-called Departmental lease covering restricted Indian lands, and the plaintiff in error, as lessee and operator of said lease, and the lease itself are Federal instrumentalities, and the Oklahoma Proration Tax Law, as applied by said Tax Commission in its order appealed from herein, contravenes the Constitution of the United States and is, therefore, invalid.

[fol. 5]

## 8

That the oil and gas lease involved in Case No. 1751 is a so-called Departmental lease covering restricted Indian lands, and the plaintiff in error, as lessee and operator of said lease, and the lease itself are Federal instrumentalities, and the Oklahoma Proration Tax Law, as applied by the said Tax Commission in its order appealed from herein, contravenes the Constitution of the United States and is, therefore, invalid.

## 9

That the Tax Commission erred in holding the plaintiff in error and its interests in the Departmental oil and gas leases, and the oil and gas produced therefrom, involved in Cases No. 1748, No. 1749, No. 1750 and No. 1751, were subject to the Oklahoma gross production tax. It is the intention of the plaintiff in error in this assignment to charge the above error on the part of the said Tax Com-



mission separately and severally in each of the above-numbered cases, the same as if a separately stated and numbered assignment of such error were made herein as to each of said cases.

That the Tax Commission erred in holding the plaintiff in error and its interests in the Departmental oil and gas leases, and the oil and gas produced therefrom, involved [fol. 6] in Cases No. 1748, No. 1749, No. 1750 and No. 1751, were subject to the Oklahoma proration tax. It is the intention of the plaintiff in error in this assignment to charge the above error on the part of the said Tax Commission separately and severally in each of the above-numbered cases, the same as if a separately stated and numbered assignment of such error were made herein as to each of said cases.

That the order of the Tax Commission herein, levying and assessing gross production taxes against the plaintiff in error and upon its interests in the various Departmental oil and gas leases involved in Cases No. 1748, No. 1749, No. 1750 and No. 1751, is contrary to law. It is the intention of the plaintiff in error in this assignment to charge the above error on the part of the said Tax Commission separately and severally in each of the above-numbered cases, the same as if a separately stated and numbered assignment of such error were made herein as to each of said cases.

That the order of the Tax Commission herein, levying and assessing proration taxes against the plaintiff in error and upon its interests in the various Departmental oil and gas leases involved in Cases No. 1748, No. 1749, No. 1750 and No. 1751, is contrary to law. It is the intention [fol. 7] of the plaintiff in error in this assignment to charge the above error on the part of the said Tax Commission separately and severally in each of the above-numbered cases, the same as if a separately stated and numbered assignment of such error were made herein as to each of said cases.

That the order of the Tax Commission levying and assessing gross production taxes against the plaintiff in error and upon its interests in the Departmental leases involved in cases No. 1748, No. 1749, No. 1750 and No. 1751, is contrary to the existing decisions of this Court and of the Supreme Court of the United States. It is the intention of the plaintiff in error in this assignment to charge the above error on the part of the said Tax Commission separately and severally in each of the above-numbered cases, the same as if a separately stated and numbered assignment of such error were made herein as to each of said cases.

That the order of the Tax Commission levying and assessing proration taxes against the plaintiff in error and upon its interests in the Departmental leases involved in cases No. 1748, No. 1749, No. 1750 and No. 1751, is contrary to the existing decisions of this Court and of the Supreme Court of the United States. It is the intention of the plaintiff in error in this assignment to charge the above error on the part of the said Tax Commission separately [fol 8] and severally in each of the above-numbered cases, the same as if a separately stated and numbered assignment of such error were made herein as to each of said cases.

That the Tax Commission erred in refusing and ruling out competent and legal evidence on the part of the plaintiff in error in Cases No. 1748, No. 1749, No. 1750 and No. 1751. It is the intention of the plaintiff in error in this assignment to charge the above error on the part of the said Tax Commission separately and severally in each of the above-numbered cases, the same as if a separately stated and numbered assignment of such error were made herein as to each of said cases.

Wherefore, Plaintiff in error prays that the Order of the Oklahoma Tax Commission herein, being Order No. 19,686, be reversed, set aside and held for naught, and that this Court render judgment herein in favor of the plaintiff in error and against the said Tax Commission, and for such other relief as may seem just.

Robert W. Richards, Box 1828, Oklahoma City 1,  
Oklahoma, Attorney for Plaintiff in Error.



[fol. 9] [File endorsement omitted]

**BEFORE THE OKLAHOMA TAX COMMISSION**

**Case Nos. 1748, 1749, 1750 and 1751**

**In the Matter of the Protests of MAGNOLIA PETROLEUM COMPANY against the Assessment of Gross Production and Proration Taxes on Production**

**Transcript of Tax Proceedings Case Nos. 1748, 1749, 1750 and 1751**

Filed in Supreme Court of Oklahoma June 26, 1946

Appeal from Order of Oklahoma Tax Commission Issued  
May 28, 1946

[fols. 10-12] [Caption omitted]

[fol. 13] **BEFORE THE OKLAHOMA TAX COMMISSION**

**Case No. 1748**

**In the Matter of the Protests of MAGNOLIA PETROLEUM COMPANY against the Assessment of Gross Production and Proration Taxes for the Period, from June 1, 1942, to March 31, 1944**

**STIPULATION OF FACTS**

It is hereby stipulated and agreed by and between the Magnolia Petroleum Company and the Oklahoma Tax Commission as follows, except that each party reserves the right to introduce any additional testimony or evidence at the hearing upon this matter before the said Tax Commission.

1.

That attached hereto as "Exhibit-A" is a photostatic copy of the assessment notice issued by the Tax Commission and served upon the Protestant in the proceedings herein; and that attached hereto as "Exhibit-B" is a true and correct copy of the protest duly filed by said Protestant herein.

Described in Notice of Assessment as the Frank Davis Lease, covering the N/2 NE/4 Sec. 15-7-4, Pottawatomie County, Oklahoma.

[fol. 14] That Frank Davis or Muc-puc, was the owner of the above-described land during the period of time involved herein and prior thereto, by virtue of the same having been allotted to him as a member of the Citizen Pottawatomie Tribe of Indians, Allottee No. 809; that attached hereto as "Exhibit C-1" is a photostatic copy of the trust deed which was issued by the United States of America, pursuant to the laws of the United States; that attached hereto as "Exhibit C-2" is a copy of the Departmental oil and gas lease executed by the said Frank Davis.

Described in Notice of Assessment as  $\frac{3}{4}$  Interest in the Kla-da-ing Lease, covering the N/2 NW/4 SW/4 Sec. 3-5-9, Caddo County, Oklahoma.

That an undivided three-fourths interest in the above described land, during the period of time involved herein and for a number of years prior thereto, was owned by the full-blood Apache Indian heirs of the allottee, Kla-da-ing, Allottee No. 942, of the Apache Tribe of Indians; that attached hereto as "Exhibit D-1" is a photostatic copy of trust deed being the present muniment of title issued by the United States of America to the said Kla-da-ing; that attached hereto as "Exhibit D-2" is a photostatic copy of the Departmental oil and gas lease which was executed by the heirs of Kla-da-ing.

Described in Notice of Assessment as the Joseph Nona [fol. 15] Lease, covering the NW/4 Sec. 11-7-4, Pottawatomie County, Oklahoma.

That the above-described land was owned during the period of time involved herein, and for a number of years prior thereto, by Joseph Nona, son and sole heir of Angeline Nona, Allottee No. 120, of the Citizen Pottawatomie Tribe of Indians; that the said Joseph Nona is also a member of the Citizen Pottawatomie Tribe of Indians;



that attached hereto as "Exhibit E-1" is the stub of Potawatomie Land Certificate No. 120, issued to Angeline Nona covering the above-described land, issued pursuant to the Act of May 23, 1872; that attached hereto as "Exhibit E-2" is a copy of the form of land certificate which was issued to the said Angeline Nona; and that attached hereto as "Exhibit E-3" is a photostatic copy of the Departmental oil and gas lease executed by Joseph Nona.

Described in Notice of Assessment as  $\frac{2}{3}$  Interest in the Pau-Kune Lease, covering the N/2 NE/4 Sec. 10-5-9, Caddo County, Oklahoma.

That an undivided two-thirds interest in the above-described land, during the period of time involved herein and for a number of years prior thereto, was owned by certain full-blood Apache Indians who were heirs at law, and, also, devisees of the allottee, Pau-Kune, Allottee No. 951, of the Apache Tribe of Indians; that attached hereto as "Exhibit F-1" is a photostatic copy of the trust deed which was issued to Pau-Kune, covering the above-described land, as well as other lands; that attached hereto as "Exhibit [fol. 16] F-2" is a photostatic copy of the Departmental oil and gas lease executed by Pau-Kune.

Described in Notice of Assessment as the Harry Saunders Lease, covering the N/2 SW/4 Sec. 4-22-3, Pawnee County, Oklahoma.

That the above-described land, during the period of time involved herein and prior thereto, was owned by Harry Saunders, Allottee No. 42, of the Otoe & Missouri Tribe of Indians; that attached hereto as "Exhibit G-1" is a photostatic copy of the trust patent issued by the United States of America to the said Harry Saunders; that the stamped notation, "fee patent issued", appearing on the face of this instrument, does not refer to the N/2 SW/4 but to the S/2 SW/4 of said section; and that attached hereto as "Exhibit G-2" is a photostatic copy of the Departmental oil and gas lease executed by Harry Saunders.

Described in Notice of Assessment as the Tissoyo Lease, covering the SE/4 Sec. 22-1S-9W, Stephens County, Oklahoma.

That Tissoyo, Allottee No. 366, of the Comanche Tribe of Indians, was the owner of the above-described land during the time involved herein and prior thereto; that attached hereto as "Exhibit H-1" is a photostatic copy of the trust deed issued to said allottee by the United States of America; that attached hereto as "Exhibit H-2" is a photostatic copy of the Departmental oil and gas lease executed by Tissoyo.

[fol. 17]

8

Described in Notice of Assessment, as the Nicholas Vieux Lease, covering the W3/4-W/2-W/2-SE/4 (Sec. 13-7-4, Pottawatomie County, Oklahoma.

That Nicholas Vieux, a member of the Citizen Pottawatomie Tribe of Indians, was the owner of the above-described land during the period of time involved herein, and for a number of years prior thereto; that he inherited said land as an heir of the allottee, Madeline Bourbonnais, a member of the Citizen Pottawatomie Tribe of Indians; that after the death of the allottee, her allotment was partitioned among her heirs by the United States Department of Interior, and after it was partitioned, the United States of America issued a trust deed covering the above-described land, as well as other land, to Nicholas Vieux, the present owner; that attached hereto as "Exhibit J-1" is a photostatic copy of said trust deed; that also attached, as "Exhibit J-2", is a photostatic copy of the Departmental oil and gas lease executed by Nicholas Vieux and the other heirs of Madeline Bourbonnais.

9

That during the period of time involved herein and prior thereto, the lands described in the preceding paragraphs of this stipulation were held in trust by the United States of America for the use and benefit of the respective owners; and that the United States of America had issued trust deeds to all of said lands, pursuant to the provisions of the General Allotment Act of 1887, as amended, except with



respect to the lands of Joseph Nona, referred to in paragraph 4 above.

[fol. 18]

That pursuant to the provisions of the General Allotment Act of 1887, as amended, the President of the United States of America has, from time to time, extended the trust periods named in the respective trust deeds, and the period of time involved herein was within these extended trust periods.

That the owners of the lands described in the preceding paragraphs of this stipulation are members of the Indian tribe indicated in the paragraph relating to each separately described tract of land and the oil and gas lease thereon; that such lands are restricted from alienation, except with the approval of the Secretary of the Interior.

That the oil and gas leases referred to in the preceding paragraphs of this stipulation, photostatic copies of which are attached "Exhibits C-2, D-2, E-2, F-2, G-2, H-2 and J-2", were approved by the Secretary of the Interior; that attached hereto as "Exhibit K" is a true and correct copy of the Regulations of the United States Department of the Interior in force for the period as shown; that said leases which were not executed in favor of Magnolia Petroleum Company were assigned to it, and during the period of time involved herein, and for a number of years prior thereto, said Magnolia Petroleum Company was the owner of said oil and gas leases insofar as they covered the lands described in the preceding paragraphs of this stipulation; that the assignments of these oil and gas leases to Magnolia Petroleum Company were made with the consent of and approved by the Secretary of the Interior Department of the United States.

That Magnolia Petroleum Company has developed said lands involved herein for oil and gas purposes, and produced oil and gas therefrom pursuant to the terms of its leases thereon; that attached hereto as Exhibits "L" and

"N" are true and correct copies of the Regulations of the United States Department of Interior pertaining to oil and gas operations upon such lands, that pursuant to said Regulations Magnolia Petroleum Company made the reports and obtained the approvals and authorizations attached hereto as Exhibits "O" through "V", and the same are typical reports made and approvals and authorizations obtained with respect to oil and gas operations conducted upon the lands described above.

## 14

That the Gross Production and Proration Taxes which the Oklahoma Tax Commission seeks to collect from Magnolia Petroleum Company in this proceeding are levied upon the interests of the Magnolia Petroleum Company in the said oil and gas leases covering the lands described in the preceding paragraphs of this stipulation.

Magnolia Petroleum Company, by Robert W. Richards, Its Attorney.

[fol. 20] Oklahoma Tax Commission, by E. L. Mitchell and C. W. King, Attys. of Record.

[fol. 21] BEFORE THE OKLAHOMA TAX COMMISSION

Case No. 1749

In the Matter of the Protests of MAGNOLIA PETROLEUM COMPANY against the Assessment of Gross Production and Proration Taxes on the R. H. Robedeaux Lease, covering the SE/4 Sec. 32.23-3, Pawnee County, Oklahoma

## STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the Magnolia Petroleum Company and the Oklahoma Tax Commission as follows, except that each party reserves the right to introduce any additional testimony or evidence at the hearing upon this matter before the said Tax Commission.

## 1

That attached hereto as "Exhibit-A" is a photostatic copy of the assessment notice issued by the Tax Commis-



sion and served upon the Protestant in the proceedings herein; and that attached hereto as "Exhibit B" is a true and correct copy of the protest duly filed by said Protestant herein.

## 2

Described in Notice of Assessment as the R. H. Robedeaux [fol. 22] Lease, covering the SE/4 Sec. 32-23-3, Pawnee County, Oklahoma.

That during the period of time involved herein and for a number of years prior thereto, the above described land was owned by Horton Homoratha, son of the allottee, Rachael H. Robedeaux, and a full-blood Indian of the Otoe & Missouri Tribe; that said land was allotted to Rachael H. Robedeaux, Allottee No. 186-A, a member of the Otoe & Missouri Tribe of Indians; that attached hereto as "Exhibit C-1" is a true and correct copy of the trust deed issued to said allottee; that attached hereto as "Exhibit C-2" is a true and correct copy of the "Approval of Heirship of the Department of the Interior, Office of Indian Affairs," dated December 8, 1924; that attached hereto as "Exhibit C-3" is a true and correct copy of a "Deed, Non-competent Indian Lands" executed by Rachael H. Robedeaux on January 31, 1924, in favor of Horton Homoratha, conveying unto the latter the E/2 SE/4 of Sec. 32; that attached hereto as "Exhibit C-4" is a true and correct copy of a similar deed executed by Rachael H. Robedeaux on October 4, 1921, in favor of Horton Homoratha, conveying the W/2 SE/4 of Sec. 32; that the foregoing instruments are the present muniments of title; that attached hereto as "Exhibit C-5" is a photostatic copy of the oil and gas lease executed by Rachael H. Robedeaux.

## 3

That the oil and gas lease referred to above was approved by the Secretary of the Interior; that attached to the stipulation in Case No. 1748, as "Exhibit K" is a true and correct [fol. 23] copy of the Regulations of the United States Department of Interior in force for the period as shown, which is incorporated herein as "Exhibit D", by reference thereto; that by virtue of various assignments, Magnolia Petroleum Company became the owner of, and during the period of time involved herein and for a number of years prior

thereto was the owner of, said oil and gas lease; that the assignments of said oil and gas lease were made with the consent and approval of the Secretary of the Interior of the United States.

4

That the Gross Production and Proration Taxes which the Oklahoma Tax Commission seeks to collect from Magnolia Petroleum Company in this proceeding are levied upon the interest of the Magnolia Petroleum Company in the said oil and gas lease covering the land first above described.

5

That Magnolia Petroleum Company has developed said land involved herein for oil and gas purposes and produced oil and gas therefrom, pursuant to the terms of its lease thereon; that attached to the stipulation in Case No. 1748, as Exhibits "L" and "M", are true and correct copies of the regulations of the United States Department of the Interior pertaining to oil and gas operations upon such lands, and the same are incorporated herein as Exhibits "E" and "F" by reference thereto; that pursuant to said Regulations, Magnolia Petroleum Company made the reports and obtained the approvals and authorizations attached to the stipulation in Case No. 1748 as Exhibits "O" through "V", which are typical reports made and approvals and [fol. 24] authorizations obtained with respect to oil and gas operations conducted upon the land described above, and that the same are incorporated herein as Exhibits "G" through "L" by reference thereto.

Magnolia Petroleum Company, by Robert W. Richards, Its Attorney; Oklahoma Tax Commission, by E. L. Mitchell and C. W. King, Attys. of Record.



## [fol. 25] BEFORE THE OKLAHOMA TAX COMMISSION

Case No. 1750

In the Matter of the Protest of MAGNOLIA PETROLEUM COMPANY against Assessment of Gross Production and Proration Taxes on the  $\frac{1}{4}$  interest in the Kla-da-ing Lease, the N/2 NW/4 SW/4 of Sec. 3-5-9, in Caddo County, Oklahoma

## STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the Magnolia Petroleum Company and the Oklahoma Tax Commission as follows, except that each party reserves the right to introduce any additional testimony or evidence at the hearing upon this matter before the said Tax Commission.

1

That attached hereto as "Exhibit-A" is a photostatic copy of the assessment notice issued by the Tax Commission and served upon the Protestant, in the proceedings herein; and that attached hereto as "Exhibit-B" is a true and correct copy of the protest duly filed by said Protestant herein.

2

Described in Notice of Assessment as the  $\frac{1}{4}$  Interest [fol. 26] in the Kla-da-ing Lease, covering the N/2 NW/4 SW/4 of Sec. 3-5-9, Caddo County, Oklahoma.

That during the period of time involved herein an undivided  $\frac{1}{4}$  interest in the above-described land, including a similar interest in the oil and gas thereunder, was owned either by certain non-Indian grantees of the heirs of Mary Moleno or by the non-Indian heirs of Mary Moleno; that attached hereto as "Exhibit-C" is a true and correct copy of the fee patent issued by the United States of America to The Heirs of Mary Moleno, Devisee of Moleno, Heir of Wau-co-chah and Kla-da-ing (Black Apache), Apache Indians; that this undivided interest is in land which was allotted to Kla-da-ing, a full-blood Apache Indian, and Allottee No. 942 of said Tribe; that "Exhibit D-1" attached to the stipulation in Case No. 1748 is a photostatic copy of the trust deed issued by the United

States of America to the said Kla-da-ing, and said deed is incorporated herein as "Exhibit-D" by reference thereto; that "Exhibit D-2" attached to the stipulation in said Case No. 1748 is a photostatic copy of the Departmental oil and gas lease executed by the heirs of Kla-da-ing, named therein, and said lease is incorporated herein as "Exhibit-E" by reference thereto.

3

That the above oil and gas lease was approved by the Secretary of the Interior; that "Exhibit-K" attached to the stipulation in Case No. 1748 is a true and correct copy of the Regulations of the United States Department of the Interior for the period as shown, and said copy of the [fol. 27] Regulations is incorporated herein as "Exhibit-F" by reference thereto; that by virtue of various assignments, Magnolia Petroleum Company became the owner, and during the period of time involved herein and for a number of years prior thereto was the owner, of said oil and gas lease insofar as it covered the land described above; that the assignment of this oil and gas lease to Magnolia Petroleum Company was made with the consent of and approved by the Secretary of the Interior Department of the United States.

4

That the Gross Production and Proration Taxes which the Oklahoma Tax Commission seeks to collect from Magnolia Petroleum Company in this proceeding are levied upon the interest of the Magnolia Petroleum Company in the said oil and gas lease covering the land first described above.

5

That Magnolia Petroleum Company has developed said land involved herein for oil and gas purposes and produced oil and gas therefrom pursuant to the terms of its lease thereon; that attached to the stipulation in Case, No. 1748, as Exhibits "L" and "M", are true and correct copies of the Regulations of the United States Department of the Interior pertaining to oil and gas operations upon such lands, and the same are incorporated herein as Exhibits "G" and "H" by reference thereto; that pursuant to said Regulations, Magnolia Petroleum Company made the reports and obtained the authorizations and approvals at-



tached to the stipulation in Case No. 1748 as Exhibits "O" through "V", which are typical reports made, and approvals and authorizations obtained with respect to oil and gas operations conducted upon the land described above, and that the same are incorporated herein as Exhibits "J" through "O", by reference thereto.

## 6

That during the time involved herein and prior thereto the remaining undivided three-fourths interest in this land was owned by full-blood Indian heirs of Kla-da-ing, the allottee, subject to the said oil and gas lease of Magnolia Petroleum Company; and that the United States of America has not issued a fee patent to these full-blood owners.

Magnolia Petroleum Company, by Robert W. Richards, Its Attorney; Oklahoma Tax Commission, by E. L. Mitchell and C. W. King, Attys. of Record.

[fol. 30] BEFORE THE OKLAHOMA TAX COMMISSION

Case No. 1751

In the Matter of the Protest of MAGNOLIA PETROLEUM COMPANY against Assessment of Gross Production and Proration Taxes on the  $\frac{1}{3}$  interest in the Pau-Kune Lease, the N/2 NE/4 Sec. 10-5-9 Caddo County, Oklahoma

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the Magnolia Petroleum Company and the Oklahoma Tax Commission as follows, except that each party reserves the right to introduce any additional testimony or evidence at the hearing upon this matter before the said Tax Commission.

## 1

That attached hereto as "Exhibit-A" is a photostatic copy of the assessment notice issued by the Tax Commission and served upon the Protestant, in the proceedings herein; and that attached hereto as "Exhibit-B" is a true and correct copy of the protest duly filed by said Protestant herein.

2

Described in Notice of Assessment as the  $\frac{1}{3}$  Interest [fol. 31] in the Pau-Kune Lease, covering the N  $\frac{1}{2}$  NE  $\frac{1}{4}$  of Sec. 10-5-9, Caddo County, Oklahoma.

That during the time involved herein the above-described  $\frac{1}{3}$  interest was owned either by the non-Indian widow of the allottee, Pau-Kune, an Apache Indian who died April 4, 1919, or the grantees of said widow; that the said Pau-Kune devised, by duly approved will, this interest to his non-Indian wife; that "Exhibit F-1" attached to the stipulation in Case No. 1748 is a photostatic copy of the trust deed which was issued to Pau-Kune covering his allotment, which included this as well as other land, and said deed is incorporated herein as "Exhibit-C"; that "Exhibit F-2" attached to the stipulation in said Case No. 1748 is a photostatic copy of the Departmental oil and gas lease executed by Pau-Kune covering the N  $\frac{1}{2}$  NE  $\frac{1}{4}$  of Section 10, as well as other land, and said lease is incorporated herein as "Exhibit-D" by reference thereto.

3

That the above oil and gas lease was approved by the Secretary of the Interior; that "Exhibit-K" attached to the stipulation in Case No. 1748 is a true and correct copy of the Regulations of the United States Department of Interior for the period as shown, and said copy of the Regulations is incorporated herein as "Exhibit E" by reference thereto; that by virtue of various assignments, Magnolia Petroleum Company became the owner, and during the period of time involved herein and for a number of years prior thereto was the owner, of said oil and gas lease insofar as it covered the land described above; that the assignment of this oil and gas lease to Magnolia Petroleum Company was made with the consent of and approved by the Secretary of the Department of Interior of the United States.

4

That the Gross Production and Proration Taxes which the Oklahoma Tax Commission seeks to collect from Magnolia Petroleum Company in this proceeding are levied



upon the interest of the Magnolia Petroleum Company in the said oil and gas lease covering the land first described above.

5.

That Magnolia Petroleum Company has developed said land involved herein for oil and gas purposes and produced oil and gas therefrom pursuant to the terms of its lease thereon; that attached to the stipulation in Case No. 1748, as Exhibits "L" and "M", are true and correct copies of the Regulations of the United States Department of the Interior pertaining to oil and gas operations upon such lands, and the same are incorporated herein as Exhibits "F" and "G" by reference thereto; that pursuant to said Regulations, Magnolia Petroleum Company made the reports and obtained the authorizations and approvals attached to the stipulation in Case No. 1748 as Exhibits "O" through "V", which are typical reports made, and approvals and authorizations obtained with respect to oil and gas operations conducted upon the land described above, and that the same are incorporated herein as Exhibits "H" through "M" by reference thereto.

6

That during the time involved herein and prior thereto [fol. 33] the remaining undivided two-thirds interest in this land was owned by full-blood Indian heirs of Pau-Kune, the allottee, subject to the said oil and gas lease of Magnolia Petroleum Company; and that the United States of America has not issued a fee patent to these full-blood owners.

Magnolia Petroleum Company, by Robert W. Richards, Its Attorney; Oklahoma Tax Commission, by E. L. Mitchell, C. W. King. Attys. of Record.

[fol. 34] BEFORE OKLAHOMA TAX COMMISSION

### **Transcript of Hearing**

Thereafter, on May 13, 1946, said matters came on for hearing before the Oklahoma Tax Commission, pursuant to notice duly given to all parties interested in each of said styled and numbered causes.

# APPEARANCES:

C. W. King, Attorney, for the Oklahoma Tax Commission.  
Robert W. Richards, Attorney, for the Protestant.

The Oklahoma Tax Commission being in session and said causes being called for hearing, the following proceedings were had:

## STATEMENT FOR COMMISSION

Mr. King: If it please the Commission, we have here four cases, entitled In the Matter of the Protest of Magnolia Petroleum Company against the Assessment of Gross Production and Proration Taxes on Production of Oil and Gas from Wild Tribes Indian Leases, for the periods beginning June 1, 1942 and to March 31, 1944. The cases are numbered 1748, 1749, 1750 and 1751 and all cover the same period.

Now, these cases we want to consolidate for the purpose of this hearing. There are some different questions that will arise, due to the degree of Indian blood or Non-Indian blood [fol. 35] of the owners of the mineral rights and certain lessors. The cases involve the same thing in the way of legal questions that are now under consideration by the Supreme Court in the case of The Texas Company vs. the Oklahoma Tax Commission,—that is, whether or not the Oklahoma Gross Production Tax on oil and gas and other minerals may be lawfully assessed and collected against the lessees' interests in such production derived from restricted Indian lands. The royalty interest as to the restricted Indians, lessors, or holders of the mineral rights, are not involved. One case involves the question of whether or not the owner of the mineral rights or lessor's fractional interest having vested in a non-Indian may operate to make the entire production on that legal sub-division or survey of the lease free from gross production tax. The theory of that will be presented by opposing counsel.

We have executed stipulations in the cases, which we ask to be considered a part of the record, properly identified and filed. We also wish to introduce a complete computation of the taxes, as made by the Gross Production Tax Division of the Oklahoma Tax Commission, and to that offer I believe there will be no objection.

Counsel for Protestant: That's right.



Reporter's Note: This exhibit, as all other exhibits, will be attached to the record immediately following the oral testimony and proceedings had at this hearing.

[fol. 36] Mr. King: It is also agreed that such compilation, on the same basis as presented, may be brought down to date.

Now, for the benefit of the Commission, since you are going to have to rule on this case, I will read the stipulation in one case, if you wish, and it will be typical of all the cases except as to the one circumstance I mentioned, about the non-Indian. Is that satisfactory?

Chairman Martin: Yes.

Mr. King, Counsel for Tax Commission: I will read the Protest in Number 1748. The protest in that case, eliminating the formal parts, is as follows:

Reporter's Note: Counsel for the Tax Commission read the Protest in case No. 1748.

Counsel for the Tax Commission then read the Stipulation in said case.

Mr. King: I wish to offer in evidence the stipulation in each of the cases above styled and numbered, and all of the exhibits named in each stipulation.

Above exhibits are made a part of the record and are attached immediately following record of oral testimony and proceedings had at hearing.

Chairman Martin: How do you men propose to handle this in the event of an appeal,—are you going to take one case to the Supreme Court or—

Counsel for Protestant: If the court please, it was our [fol. 37] thought that since Mr. King asked that the four cases be consolidated we may take them up together.

Mr. King: When I said that I meant for the purpose of this hearing, only. I didn't contemplate stipulating as to what we are going to do after the cases are decided,—that would be pre-supposing,—the consolidation is only for the purpose of this hearing.

Mr. King: It is stipulated, of course, that the proration tax and the gross production tax are involved, in the same respects and the same contention applies to one as to the other.

Mr. King: We also wish to offer in evidence the compilation referred to in the opening statement, of the taxes, and if not brought down to date at the time the case is finally

decided, it is stipulated that the calculations and computations of the amount of taxes due, in each case, may be brought down to the time of final adjudication.

**Reporter's Note:** This exhibit, with all others, will be made a part of the record and attached following this transcript.

**Mr. King:** It is agreed that all of the assessment letters and the computation attached to each are contained in the stipulation and are, therefore, for the purpose of preventing duplication, not separately introduced.

**Mr. King:** The question before the Commission, ultimately to be decided here, as stated in the agreed statement [fol. 38] of facts, being paragraph two, of case 1748,—the contention of the taxpayer is that during the period of time involved herein the taxpayer has consistently claimed and maintained that the gross production involved in these cases is exempt and free from gross production and proration taxes. That during all of said time and prior thereto it has been likewise the contention of the Oklahoma Tax Commission, present and preceding ones, that such production has at all times been subject to gross production and proration taxes under the laws of the State of Oklahoma.

**Mr. King:** I will state to the Commission that the Gross Production Division of the Oklahoma Tax Commission has prepared individual statements of and a recapitulation of the tax statements for the period: \_\_\_\_\_ and that has been brought down to date by a compilation entitled "Summary of Gross Production Tax Statements with Penalty, to May 1, 1946". We offer those compilations, which compose or comprise the individual liabilities, up to March 1, 1946, the penalty figured to May 1, 1946, in each case.

**Reporter's Note:** The exhibits above mentioned are attached following this transcript and are made a part of this record.

**Counsel for Tax Commission:** We rest.



[fol. 39] R. E. CHANDLER, called as a witness for protestant, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to interrogatories propounded to him, testified as follows:

Direct examination.

By Mr. Richards:

Q. State your name.

A. R. E. Chandler.

Q. You are an employee of the Magnolia Petroleum Company?

A. Yes, sir.

Q. Were you formerly Assistant Production Superintendent for the State of Oklahoma?

A. Yes sir.

Q. How long have you served in that capacity?

A. From 1926 to May, 1944.

Q. Mr. Chandler, are you familiar with the Indian leases involved in this hearing,—you have examined the exhibits here and are familiar with the several leases involved?

A. Yes, I am familiar with them.

Q. In your capacity as Production Superintendent, or Assistant Production Superintendent, did you have occasion to supervise the operations on these leases?

A. Yes, I did.

Q. In your capacity was it the customary practice of the Magnolia Petroleum Company to comply, in all of its production operations, with the rules and regulations promulgated by the Department of the Interior with respect to such Wild Tribes leases?

A. (No Answer, because of objection.)

Counsel for Tax Commission: We object to that, for the reason that the witness is incompetent to state the policy of the Magnolia Petroleum Company and if the witness does have knowledge of the policy of the Company in that respect, independently of the actual practice the Company follows, it is not proper for him to state whether the Company's policy to follow the regulations, whether it is the policy of the Company to follow the regulations of the Department of the Interior,—it is wholly immaterial in these cases and has nothing to do with the issues involved here. The issues raised here,—the issue here is whether or

not these properties are exempt under the terms and conditions of the leases and under the provisions of law applicable thereto.

Counsel for Protestants: Let me ask the witness,——

Q. Mr. Chandler, were the Field Superintendents who had charge of these leases herein, instructed, furnished instructions to the effect that when work was to be done in connection with the production operations they should submit the data and information to your office?

A. That's correct,—yes, sir.

[fol. 41] Counsel for Tax Commission: We object to that question and ask that the answer be stricken, for the reason that the legal rights of the State and the Company can in no wise be altered by what anybody would do.

Chairman Martin: Sustained.

Counsel for Protestant: Give us an exception. And I want to make an offer of proof.

#### STATEMENT RE TESTIMONY

Comes now the Magnolia Petroleum Company and tenders the following evidence as the testimony of Mr. R. E. Chandler and Mr. R. Robnett.

Objections to the competency of such testimony having been sustained, the Protestant herein offers the following as being in substance the testimony which would have been given by these witnesses, Mr. R. E. Chandler and Mr. R. Robnett, had they been permitted to so testify:

That the Magnolia Petroleum Company, in its production operations upon the oil and gas leases involved in each of the cases herein, has conducted all operations in accordance with the rules and regulations promulgated by the Department of the Interior of the United States,—that pursuant thereto it was the policy of the Magnolia Petroleum Company to observe and follow each of such regulations and conform with each regulation, as well as the specific authorization given by the Geological Surveys, Office of De-  
[fol. 42] partment of the Interior, having to do with the enforcement of such regulations during the period of time herein involved,—that the Field Superintendent of the Magnolia Petroleum Company having such Wild Tribes oil and gas leases within their territory were furnished lists of such leases and were informed and instructed that all operations



upon such leases must be conducted in accordance with the rules and regulations mentioned and that all work upon such leases must be submitted to the Division Superintendent's Office, in order that permission from the Geological Survey could be obtained to do such work. That in respect to the oil and gas leases in question the Magnolia Petroleum Company, in accordance with such rules and regulations, submitted the necessary requests for authorization and approval to perform such work upon such leases,—that when work was to be done upon such leases, such as abandoning, plugging, drilling deeper, or other substantial changes were to be made in the leasehold, proper application was made to the Geological Survey Department of the Department of the Interior and thereafter such Geological Survey issued written letters of approval or authorization, either approving the suggested manner in which the work was to be done or specifying any changes which such Geological Survey thought should be made for or in the specifications submitted for such work. That it was customary for the Geological Survey Representative to be present upon the lease when any well was plugged, or when any well was to be [fol. 43] plugged, even though written permission and authority to perform such work had been previously obtained from such Geological Survey. That on many occasions in respect to these leases the Geological Survey Representatives made suggestions as to changes in the method of operation and in the manner of operations,—the manner in which such operations should be conducted and were to be conducted. That the Geological Survey maintained the same supervisory interest in the Pau-Kune, in the Kla-da-ing and Robedeaux leases as they did in all other Wild Tribes leases as involved herein, that physical inspection of the oil and gas leases and premises were made from time to time, by representatives of the Geological Survey, that suggestions were made therewith that the Geological Survey Representatives were interested in the continuation of production of oil and gas from such leases and it was necessary for Magnolia Petroleum Company to show economic justification before such Geological Survey would authorize the abandonment and plugging of any well upon any of the leases herein involved. That in the event work was commenced upon one of the leases, after approval and authorization for such work had been obtained, if it became apparent

that the approved specifications for such work would not be satisfactory then it was necessary to, and the Magnolia Petroleum Company did, obtain the approval from such Department to such changes in the work. That on several occasions with respect to said leases the Geological Survey Representatives called the attention of the Magnolia Petroleum Company to the necessity for offset wells, without waiting for the Magnolia Petroleum Company to submit their requests to drill such offset well on its lease.

That the witness named Mr. Chandler, would further testify from his experience, that it cost additional money for the Magnolia Petroleum Company to operate in accordance with the rules and regulations of the Department of the Interior applicable to these leases than it did to leases wherein the Interior Department had no jurisdiction or interest; that he would further testify that in one instance, after a physical inspection of the Nona lease, the Geological Survey Representative requested that certain surface obstructions be removed from and around an abandoned well.

That the witness, Mr. Robinett, would further testify that during the period from 1944 after Mr. Chandler left the office of Assistant Production Superintendent, he took over the duties relating to these oil and gas leases and that since that time such oil and gas leases have been operated as set forth above.

Counsel for Protestant: Of course, I want the record to show the offer of this testimony, that an objection to its admission has been sustained and that we except to the ruling of the Court.

[fol. 45] Reporter's Certificate to foregoing transcript omitted in printing.



## Case No. 1748

(Consolidated with Cases No. 1749, No. 1750 and No. 1751)

In the Matter of the Protest of the MAGNOLIA PETROLEUM COMPANY, a Corporation, against the Assessment of Gross Production and Proration Taxes on Production from Wild Tribes Indian Leases.

## ORDER No. 19,686

Now on the 13th day of May, 1946, this matter came on to be heard on the protest of the Magnolia Petroleum Company, a corporation, against the assessment of Gross Production and Proration Taxes on production from Wild Tribes Indian Leases for the period of time from June 1, 1942, to March 1, 1946, and by agreement of the parties and upon order of the Oklahoma Tax Commission, Cases numbered 1748, 1749, 1750 and 1751 were consolidated as Case No. 1748 for the purpose of this hearing.

The Protestant appearing by its attorney, Robert W. Richards, and the Oklahoma Tax Commission, by its assistant attorney, C. W. King, thereupon the matter was submitted to the Commission upon the evidence and argument of counsel, and after hearing the evidence and argument, the Commission took the matter under advisement.

Thereafter, on the 13th day of May, 1946, the Commission [fol. 47] being fully advised in the premises, finds the issues against the Protestant; and the Commission further finds that the protests of Magnolia Petroleum Company against the assessment of Gross Production and Proration Taxes should be denied, and that Gross Production and Proration Taxes should be assessed against said Protestant in the consolidated cases herein, as follows, to-wit:

(1) Case No. 1748—Gross Production Tax in the sum of \$26,764.39, for the period from June 1, 1942, to March 1, 1946, with interest and penalty thereon to May 1, 1946, in the sum of \$10,289.32, making a total of \$37,053.71. Proration Tax in the sum of \$479.21, for the same period of time, with interest and penalty thereon to May 1, 1946, in the sum of \$200.63, making a total of \$679.84.

(2) Case No. 1749—Gross Production Tax in the sum of \$249.67, for the period from June 1, 1942, to March 31, 1944,

with interest and penalty thereon to May 1, 1946, in the sum of \$139.86, making a total of \$389.53. Proration Tax in the amount of \$4.90, for the period from June 1, 1942, to March 31, 1944, with interest and penalty thereon to May 1, 1946, in the sum of \$2.77, making a total of \$7.67.

(3) Case No. 1750—Gross Production Tax in the sum of \$95.58, for the period from June 1, 1942, to March 1, 1946, with interest and penalty thereon to May 1, 1946, in the sum of \$30.94, making a total of \$126.52. Proration Tax in the amount of \$1.55, for the period from June 1, 1942, to March [fol. 48] 1, 1946, with interest and penalty thereon to May 1, 1946, in the sum of \$0.52, making a total of \$2.07.

(4) Case No. 1751—Gross Production Tax in the sum of \$9,258.95, for the period from June 1, 1942, to March 1, 1946, with interest and penalty thereon to May 1, 1946, in the sum of \$3,514.76, making a total of \$12,773.71. Proration Tax in the amount of \$164.92, for the period from June 1, 1942, to March 1, 1946, with interest and penalty thereon to May 1, 1946, in the sum of \$68.97, making a total of \$233.89.

It is, therefore, By the Tax Commission, Considered, Ordered and Adjudged That the protests of Magnolia Petroleum Company against the assessment of Gross Production and Proration Taxes in Cases No. 1748, No. 1749, No. 1750 and No. 1751, consolidated herein as Case No. 1748, be denied in each case, and that there be hereby assessed against said Protestant Gross Production and Proration Taxes in each case, as follows:

(1) Case No. 1748.—Gross Production Tax in the sum of \$26,764.39, for the period from June 1, 1942, to March 1, 1946, with interest and penalty thereon to May 1, 1946, in the sum of \$10,289.32, or a total of \$37,053.71. Proration Tax in the sum of \$479.21, for the same period of time, with interest and penalty thereon to May 1, 1946, in the sum of \$200.63, or a total of \$679.84, making a total of Gross Production and Proration Taxes, including interest and penalties thereon, in the amount of \$37,733.55.

[fol. 49] (2) Case No. 1749.—Gross Production Tax in the sum of \$249.67, for the period from June 1, 1942, to March 31, 1944, with interest and penalty thereon to May 1, 1946, in the sum of \$139.86, or a total of \$389.53. Proration Tax in the amount of \$4.90, for the period from June 1, 1942, to



March 31, 1944, with interest and penalty thereon to May 1, 1946, in the sum of \$2.77, or a total of \$7.67, making a total of Gross Production and Proration Taxes, including interest and penalties thereon, in the amount of \$397.20.

(3) Case No. 1750.—Gross Production Tax in the sum of \$95.58 for the period of time from June 1, 1942, to March 1, 1946, with interest and penalty thereon to May 1, 1946, in the sum of \$30.94, or a total of \$126.52. Proration Tax in the amount of \$1.55, for the same period of time, with interest and penalty thereon to May 1, 1946, in the sum of \$0.52, or a total of \$2.07, making a total of Gross Production and Proration Taxes, including interest and penalties thereon, in the amount of \$128.59.

(4) Case No. 1751.—Gross Production Tax in the sum of \$9,258.95, for the period from June 1, 1942, to March 1, 1946, with interest and penalty thereon to May 1, 1946, in the sum of \$3,514.76, or a total of \$12,773.71. Proration Tax in the amount of \$164.92, for the same period of time, with interest and penalty thereon to May 1, 1946, in the sum of \$68.97, or a total of \$233.89, making a total of Gross Production and Proration Taxes, including interest and penalties thereon, in the amount of \$13,007.60.

The total Gross Production and Proration Taxes, including interest and penalties as set forth above, hereby assessed being in the sum of \$51,266.94.

[fol. 50] Oklahoma Tax Commission, By J. Frank Martin, Chairman; Ernest M. Black, Vice-Chairman.

Attest: H. D. Canfield, Secretary. O.K., C. W. King.

[fol. 51] BEFORE THE OKLAHOMA TAX COMMISSION

Case No. 1748

In the Matter of the Protest of the MAGNOLIA PETROLEUM COMPANY, a Corporation, against the Assessment of Gross Production and Proration Taxes on Production from Wild Tribes Indian Leases for the Period from June 1, 1942, to March 1, 1946.

#### NOTICE OF INTENTION TO APPEAL

Comes now the Magnolia Petroleum Company, a corporation, taxpayer herein, and, feeling itself aggrieved by the

order, ruling and finding of the Oklahoma Tax Commission directly affecting said taxpayer, in assessing against it gross production and proration taxes on production obtained from Wild Tribes Indian Leases for the period from June 1, 1942, to March 1, 1946, inclusive, in the total amount of \$51,822.22, including penalties thereon to June 1, 1946, hereby gives written notice of its intention to appeal from such order and ruling of said Commission to the Supreme Court of the State of Oklahoma, and respectfully requests that the Oklahoma Tax Commission furnish said taxpayer with the original and one copy of a transcript of the proceedings had before said Tax Commission in connection with the matter above complained of.

A copy of the Tax Commission's Order No. 19,686, from which Magnolia Petroleum Company gives notice of appeal to the Supreme Court of Oklahoma, is hereto attached, [fol. 52] marked "Exhibit-A" and made a part hereof; said total amount of gross production and proration taxes being paid herewith under protest as by law required.

Dated this 6th day of June, 1946.

Magnolia Petroleum Company, By Robert W. Richards; W. R. Wallace, Its Attorneys.

Service of the above Notice of Appeal to the Supreme Court of Oklahoma, in the above-styled matter, is hereby acknowledged this 6 day of June, 1946, same having been served within the time provided by the statutes of the State of Oklahoma.

E. L. Mitchell, Attorney for Oklahoma Tax Commission.

[fol. 53] Secretary's Certificate to foregoing transcript omitted in printing.



[fol. 54] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 32678

MAGNOLIA PETROLEUM COMPANY, a Corporation, Plaintiff in  
Error,  
vs.

OKLAHOMA TAX COMMISSION, Defendant in Error

**Syllabus**

1. A lessee producing oil from lands of restricted Pottawatomie, Apache, Comanche, Otoe and Missouri Indians under departmental lease approved by and subject to supervision of the Secretary of the Interior of the United States, is engaged in the operation of a governmental instrumentality or agency and in the absence of permissive legislation by Congress, or appropriate Federal consent or waiver or withdrawal of immunity, the oil production or the oil as produced is not subject to the state gross production tax of five per cent of the value of the oil produced.

[fol. 55] Appeal from Oklahoma Tax Commission

From order assessing gross production and oil excise or proration taxes on certain oil production the Magnolia Petroleum Corporation appeals.

**Order Reversed**

Wallace Hawkins, Dallas, Texas; Robert W. Richards, Okla. City, Okla., for Plaintiff in Error.

E. L. Mitchell, Edmund J. Armstrong and C. W. King, of Oklahoma City, Okla., for Defendant in Error.

OPINION—Filed September 23, 1947

WELCH, J.:

This appeal tests the validity of certain tax assessments, the gross-production and oil excise tax, made against the Magnolia Petroleum Company for oil production under departmental leases on restricted lands or trusts title lands of Pottawatomie, Apache, Comanche, Otoe and Missouri Indians.

When the Commission served notice of such assessments the Company filed its protests, the several notices and protests being consolidated for hearing. After hearing the Commission entered its order sustaining the assessments and upon appropriate statute the company appeals to this court.

[fol. 56] The chief question, and as we not regard it, the controlling question is whether oil production under such admitted circumstances is subject to the state tax involved.

This question was determined in 32270, *The Texas Company vs. Oklahoma Tax Commission*, this day decided. Here also we conclude that the rule of immunity specifically upheld by the Supreme Court of the United States is binding and conclusive. See *Howard v. Gypsy Oil Co.*, 247 U. S. 504, 62 L. ed. 1239, and *Large Oil Company v. Howard*, 248 U. S. 549, 63 L. ed. 416.

Other questions are here presented by the Company, but we deem it unnecessary to discuss or consider them in view of this determination.

By virtue of the controlling force of the authorities cited we conclude that this oil production, or oil as produced, was not subject to the tax involved.

Therefore the order appealed from is reversed, with directions that the tax assessments involved be vacated. Hurst, C. J., Davison, V. C. J., Riley, Gibson, and Luttrell, concur. Corn, J., Dissents.

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[fol. 57] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING—Filed October 6, 1947

Comes now the Oklahoma Tax Commission, defendant in error, and respectfully represents to the court that on the 23rd day of September, 1947, a decree and judgment was rendered by this Court in said cause holding:

"1. A lessee producing oil from lands of restricted Pottawatomie, Apache, Comanche, Otoe and Missouri Indians under departmental lease approved by and subject to supervision of the Secretary of the Interior of the United States,



is engaged in the operation of a governmental instrumentality or agency and in the absence of permissive legislation by Congress, or appropriate Federal consent or waiver or withdrawal of immunity, the oil production or the oil as produced is not subject to the state gross production tax of five per cent of the value of the oil produced."

[fol. 58] (1) That said decision overlooked a question decisive of the case, and duly submitted by counsel as follows:

That in order for a burden on an instrumentality of the Government to inhibit the collection of a uniform tax, such burden must be direct and substantial and actually hinder the operation of functions of the State Government in the performance of its duties.

(2) That said decision is in conflict with the law, both State and Federal, to which the attention of the Court has not been called, either in brief or oral argument, or which has been overlooked by the court to the effect that theoretical burdens on governmental instrumentalities or agencies are no longer recognized by the Supreme Court of the United States to the extent that same prevents a state from levying and collecting the ordinary tax applying to other like persons.

(3) That the said decision is erroneous in that it wrongfully and unlawfully deprives the State of Oklahoma of the exercise of the highest sovereign power, that of the power to raise revenues for the support of the state government which said power is supreme and cannot be impinged, curtailed or denied to the sovereign state on account of the laws, rules, regulations or other processes of the federal government. The court overlooked the fact that oil companies pay the same price for restricted leases for the production of oil, gas, and other minerals in the State of Oklahoma [fol. 59] that is paid for non-restricted leases, and therefore, the Indian, the ward of the government, is not penalized by the oil or gas developing contract or lease because of his restrictions. In most instances, as this court knows from common knowledge, the oil leases are initially bought by brokers or oil scouts depending solely upon the oil producing expectancy and at the time they are bought and the purchase price is made, it is not known whether

or not a given lease is taxable or nontaxable and therefore, the identical consideration for the annual lease money or bonus is paid for the lease on the restricted area as on the non-restricted tract.

We assume of course, that it was the intention of the court to restrict the opinion to restricted Indian properties under departmental lease and under supervision of the Secretary of the Interior and that it was not the intention of the court to hold that the inhibition operated against levying the taxes against the non-Indian interest, that is, the interest of Juana Pau-Kune, a non-restricted Mexican citizen having no Indian blood. One-third interest in the Pau-Kune lease, covered the N/2 NE/4 of Section 10-5-9, Caddo County, Oklahoma.

The same of course, applies to the one-fourth interest in the Kladaing allotment owned by non-Indian grantees of Mary Maleno as shown by photostatic copies of fee simple [fol. 60] patents issued by the United States, heirs of Mary Molena, devisees.

Wherefore, defendant in error prays that a rehearing of said cause may be granted by this Honorable Court and that the same be set down for oral argument and permission given to resubmit the questions involved to the consideration of the Court; that upon such consideration, the case be reversed.

Mac Q. Williamson, Attorney General. Fred Hansen, First Assistant Attorney General. C. W. King, General Counsel, Oklahoma Tax Commission, Attorneys for Defendant in Error.

[fol. 61]

Affidavit of Mailing

STATE OF OKLAHOMA,  
Oklahoma County, ss.:

Lucile Williams being duly sworn on oath, deposes and says that on the 6th day of October, 1947, she enclosed a copy of the attached Petition for Rehearing, in an envelope addressed to: Mr. Robert W. Richards, Attorney at Law, P. O. Box 1828, Oklahoma City, Oklahoma, with postage thereon fully prepaid, and deposited the same in the United



States post office at the State Capitol, in Oklahoma City, Oklahoma.

Lucile Williams.

[fol. 62] Subscribed and sworn to before me this 6th day of October, 1947. Effa Alexander, Notary Public. My commission expires October 28, 1948. (Seal.)

[fol. 63] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

ORDER DENYING PETITION FOR REHEARING—Filed February 27, 1948

The Clerk is hereby directed to enter the following orders. 32,678—Magnolia Petroleum Co. v. The Oklahoma Tax Commission. Petition For Rehearing is Denied.

Thurman S. Hurst, Chief Justice.

[fol. 64] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

MOTION FOR ORDER STAYING MANDATE

Comes now the defendant in error, Oklahoma Tax Commission, in the above entitled cause, and respectfully shows to the court that defendant in error desires to appeal to the Supreme Court of the United States from the decision of this court rendered herein on the 22nd day of January, 1948, and from Order overruling petition for rehearing entered January 27, 1948, and that said defendant in error, Oklahoma Tax Commission, desires that the mandate in said cause be stayed pending such appeal.

Wherefore, defendant in error, Oklahoma Tax Commission, prays the court to enter an Order herein staying the mandate in said above styled cause pending the appeal

herein of defendant in error to the Supreme Court of the United States.

Mac Q. Williamson, Attorney General; Fred Hansen, Assistant Attorney General; C. W. King, General Counsel for Oklahoma Tax Commission, Attorneys for Defendant in Error.

### Affidavit of Mailing

STATE OF OKLAHOMA,  
Oklahoma County; ss:

C. W. King, being first duly sworn upon his oath states that he is one of the attorneys for the above named defendant in error; that on January 29, 1948, he enclosed a copy of the above Motion to Stay Mandate in an envelope addressed to Mr. Robert W. Richards, one of the attorneys for the above named plaintiff in error, at his office in care of the Legal Division of the Magnolia Petroleum Company, Box 1828, Oklahoma City, Oklahoma, and deposited the same, with postage thereon paid, in the United States post office at Oklahoma City, Oklahoma.

C. W. King.

Subscribed and sworn to before me this 29th day of January, 1948. Ann Fannin, Notary Public. My Commission Expires: Apr. 8, 1950. (Seal.)

[fol. 66] [File endorsement omitted]

### IN THE SUPREME COURT OF OKLAHOMA

ORDER STAYING MANDATE—Filed February 10, 1948

The Clerk is hereby directed to issue the following orders:

32270—The Texas Co. v. Oklahoma Tax Commission,  
32678—Magnolia Petroleum Co. v. Oklahoma Tax Commission,

Ordered that mandate in the above styled causes be stayed until April 29, 1948, pending appeal to the U. S. Supreme Court, and thereafter until Final disposition by that court if appeals are perfected within time allowed.

Thurman S. Hurst, Chief Justice.



[fol. 67]

[File endorsement omitted]

## IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL AND PRAYER FOR  
REVERSAL—Filed February 19, 1948

To the Honorable Chief Justice of the Supreme Court of  
the State of Oklahoma:

Your appellant in the above entitled cause, and appellees and defendant in error in the cause in the Supreme Court of Oklahoma, hereinafter referred to, considering themselves aggrieved by the final decision and judgment of the Supreme Court of Oklahoma, entered on the 23rd day of September, 1947, which said judgment became final upon the overruling of petition for rehearing on the 27th day of January, 1948, in the cause entitled;

[fol. 68] "The Magnolia Petroleum Company, a corporation, plaintiff in error, vs. Oklahoma Tax Commission, defendant in error, No. 32678."

on the docket of said court, reversing the order and judgment of the District Court of Oklahoma County, Oklahoma hereby files its petition for an appeal from said decision and judgment to the Supreme Court of the United States.

In the above entitled cause in the Supreme Court of Oklahoma there is drawn in question the validity of statutes of the State of Oklahoma, to-wit: Sections 821 to 843 inclusive, Ch. 20, Title 68, Okla. Stat. 1941, as amended by Ch. 20, 1947 Supl. to Stat. 1941, on the ground that said statutes are invalid as applied to the plaintiff in error below and the appellee herein and are, as enforced, in violation of the Acts of Congress which the appellee urged operated to make exempt and immune from taxation production of oil and gas from restricted Indian leases, particularly the General Allotment Act of the United States of America, approved February 8, 1887, Chapter 119, 24 Statute, 388 and Acts amendatory thereof, and the Act of Congress March 3, 1935, Ch. 781 and 783, that the said 7/8 working interest of the Magnolia Petroleum Company, lessee of restricted Indian lands, was immune from taxation by the State of Oklahoma and that the state's efforts to collect

a gross production tax from said lessee, the Magnolia Petroleum Company, was in violation of the 14th Amendment of the Constitution of the United States of America [fol. 69] in that each of said leases constituted an instrumentality of the Government of the United States and was, therefore, exempt and immune from state taxation as applied to the Oil Company lessee. The judgment and decision of the Supreme Court of Oklahoma sustained said position of the taxpayer and held said tax invalid and in contravention of the Acts of Congress as interpreted by the decisions of this court; and such decision of the State Court operated to deprive the State of Oklahoma as represented by the Oklahoma Tax Commission as its officers and agents, of the right to levy and collect the gross production tax on oil and gas derived from the operation of the said Magnolia Petroleum Company, lessee, under restricted Indian Oil leases, which said decision denied to the State of Oklahoma and the appellant herein, its sovereign right guaranteed under the Enabling Act admitting the State of Oklahoma to statehood and the provisions of the State Constitution of Oklahoma, adopted pursuant thereto, and violates the rights of the State of Oklahoma as guaranteed under the Constitution of the United States in that it deprives the State of Oklahoma of its sovereign power of taxation as related to the subject matter of this litigation; that said decision is repugnant to treaties and laws of the United States relating to the Osage Tribe of Indians and should be reviewed by this court of appeal.

The decision and final judgment of the Supreme Court of Oklahoma herein appealed from, were in favor of the validity of the said Statute of the State of Oklahoma as applied to the oil and gas produced from restricted Indian lands by the Magnolia Petroleum Company, as lessee. [fol. 70] The Supreme Court of Oklahoma is the highest court of the state of Oklahoma in which a decision of the issues of this cause could be obtained.

Appellant shows that this case is one in which, under the legislation in force to-wit: Sec. 237 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and the Act of January 31, 1928 (28 U.S.C. Secs. 344 (a), and 861 (a)), a review may be made in this court as a matter of right by appeal.



This appeal is accompanied by an assignment of errors setting forth the grounds upon which the decision and judgment of the Supreme Court of Oklahoma should be reversed and a statement particularly disclosing the basis on which it is contended that the Supreme Court of the United States has jurisdiction to review said decision and judgment of the Supreme Court of Oklahoma.

Wherefore, your appellant prays that an appeal may be allowed herein from the Supreme Court of Oklahoma to the Supreme Court of the United States in order that said decision and judgment of the Supreme Court of Oklahoma may be examined and reversed; that a transcript of the material part of the record in said cause, duly authenticated may be ordered to be prepared and certified to the Supreme Court of the United States as provided by law; that an order may be made fixing the security to be required of appellant (or excepting appellant from such requirement on the ground that this is a suit for and on behalf of the [fol. 71] state of Oklahoma); that such security for cost as may be required in lieu of bond and tendered herewith may be approved; and that there be issued to appellee a citation directing said appellee to appear in the Supreme Court of the United States at Washington, D. C., within forty days from the date hereof and there show cause, if any there be, why said decision and judgment should not be reversed and speedy justice be done the parties in that behalf.

Mac Q. Williamson, Attorney General; Fred Hanson, Assistant Attorney General; C. W. King, General Counsel, Oklahoma Tax Commission

STATE OF OKLAHOMA,

Oklahoma County, ss:

Service of the foregoing petition for appeal was made upon counsel of record for the Texas Company, plaintiff in error herein and appellee in this appeal by depositing in the United States Post Office at Oklahoma City, postage prepaid, a copy of this petition clearly addressed to said counsel to-wit: Robert W. Richards, Box 1828, Oklahoma City, Oklahoma, this 19th day of February, 1948.

C. W. King.

[fol. 72] Subscribed and sworn to before me the undersigned notary public this 19th day of February, 1948. W. F. Lemons, Assistant Clerk. (Seal.)

[fol. 73] [File endorsement omitted.]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed February 19, 1948

The appellant, Oklahoma Tax Commission, for its assignment of error herein says that the Supreme Court of Oklahoma in its decision and judgment in the cause entitled: "Magnolia Petroleum Company, a corporation, plaintiff in error, vs. Oklahoma Tax Commission, defendant in error. No. 32678," erred in its order and decision reversing the judgment of the Oklahoma Tax Commission, in cases No. 1748 to 1751 inclusive, wherein the Tax Commission entered its order and judgment sustaining the levy and collection of the State gross production tax on oil and gas, as applied to the oil company lessee and producer.

Upon review of such order and judgment of the Oklahoma Tax Commission, the Supreme Court of Oklahoma erred in each of the following particulars and in each particular, appellant was deprived of its just rights on behalf of the State of Oklahoma and was denied the exercise of the sovereign powers of taxation guaranteed under the Constitution of the United States:

(1) The Supreme Court of Oklahoma erred in reversing the order and judgment of the Oklahoma Tax Commission and by holding the Oklahoma Statute levying the gross production tax on oil, gas and other minerals did not apply to the 7/8 working interest in the oil and gas produced by the Magnolia Petroleum Company and belonging to it; for the reason that the said production came from so-called restricted Indian lands and was, therefore, immune from State taxation.

(2) Said court erred in reversing the order and judgment of the Oklahoma Tax Commission for the reason that the United States Government has no title, ownership or property interest in the subject matter of this litigation which would operate to make the levying and the collection of the Oklahoma gross production tax on oil and gas an unlawful burden upon any agency or instrumentality of the United States Government, in that the levying and collection of

said tax in no wise burdens the Government of the United States directly or indirectly.

(3) The Supreme Court of Oklahoma erred in reversing the said judgment of the District Court of Oklahoma County by holding:

"A lessee producing oil from lands of restricted Pottawatomie, Apache, Comanche, Otoe and Missouri Indians under departmental lease approved by and subject to supervision of the Secretary of the Interior of the United States, is engaged in the operation of a governmental instrumentality or agency and in the absence of permissive legislation by Congress, or appropriate Federal consent or waiver or withdrawal of immunity, the oil production or the oil as produced is not subject to the state gross production tax of five per cent of the value of the oil produced."

[fol. 75] (4) The Supreme Court of the State of Oklahoma erred in reversing the judgment of the Oklahoma Tax Commission in holding that the departmental leases described in plaintiff's petition constituted such Federal agencies or instrumentalities as are immune from taxation to the lessee on the ground that such taxation would burden the arm of the Federal Government in the administration of the affairs of the Indian and thereby impair his fortune and so weaken the arm of the Federal Government in discharging an obligation to its ward.

(5) The Supreme Court of Oklahoma erred in refusing to hold upon the urgency of the appellant, Oklahoma Tax Commission, that the Magnolia Petroleum Company could not be heard and had no standing in court to maintain an action for the recovery of taxes based upon the theory that to tax the oil company on its oil and gas production from an Indian lease would burden (not the Indian nor the oil company) but would so burden the United States Government by impinging upon the exercise of the government over a federal agency or instrumentality to the extent of interfering with the government in administering the Indian's estate.

(6) The judgment and decision of the Supreme Court of Oklahoma reversing the judgment of the Oklahoma Tax



Commission was erroneous in that it applied the federal instrumentality or federal agency doctrine of inhibition against the State of Oklahoma and the Oklahoma Tax Commission after all of the cases, both state and federal, so applying such doctrine as to arrest the taxing power of the state in that particular, had been either directly, or by plain implication, overruled by the Supreme Court of the United States.

[fol. 76] (7) The judgment of the Supreme Court of the State of Oklahoma was erroneous and prejudicial and damaging to the interest of the State of Oklahoma and the Oklahoma Tax Commission in that it deprived the state of its sovereign taxing power guaranteed under the treaty of the Louisiana Purchase and further guaranteed by the Constitution of the United States and for the further reason that the said decision of the Supreme Court of Oklahoma places the State of Oklahoma in a position of inferiority and impotency as compared with the sister states of the Union, in that to so deprive the State of its sovereign taxing power, operates to deprive said state of its admission to, and place in, the Union of the United States on an equal basis with the original thirteen states.

(8) The opinion of the Supreme Court of the State of Oklahoma and its decree were erroneous and prejudicial to the rights of the State of Oklahoma and the Oklahoma Tax Commission, appellant herein, in that said opinion incorrectly and erroneously construed the Acts of Congress and the decisions of the State and Federal Courts, including recent cases of the Supreme Court of the United States, in which the doctrine of federal instrumentality and federal agency has been modified so that in order for a taxpayer to avoid taxes on such ground, it must be shown that the tax, in point of fact as opposed to theory, actually and substantially burdens the arm of the government of the United States in administering such instrumentality or agency, and that it is not enough to merely show that the subject of taxation is comprised of property over which the government is exercising a form of superintendence and supervision.

For each of the errors specified above and because in each of said respects, the said judgment of the Supreme Court of Oklahoma in reversing the order and judgment of the

Oklahoma Tax Commission, deprives appellant and the State of Oklahoma of its property without due process of law, and deprives it of the equal protection of the law and denies to it the exercise of equal sovereign powers with the original states, in violation of the treaty of the Louisiana Purchase and the provisions of the Constitution of the United States; and for the reason that said judgment violates the General Allotment Act and the various other Acts of Congress, allotting to said Indians the properties from which the oil and gas was produced; and for such reasons appellant prays that said decision and judgment be reviewed by the Supreme Court of the United States and be there reversed and judgment rendered in favor of the appellant, Oklahoma Tax Commission, on behalf of the State of Oklahoma.

Mac Q. Williamson, Attorney General; Fred Hansen, Asst. Attorney General; C. W. King, General Counsel, Oklahoma Tax Commission.

[fols. 78-85] STATE OF OKLAHOMA,  
Oklahoma County, ss:

Service of the foregoing assignment of errors was made upon counsel of record for the Texas Company, plaintiff in error herein and appellee in this appeal, by depositing in the United States Post Office at Oklahoma City, postage prepaid, a copy of this petition clearly addressed to said counsel to-wit: Robert W. Richards, Box 1828, Oklahoma City, Oklahoma, this 19th day of February, 1948.

C. W. King, General Counsel, Oklahoma Tax Commission.

Subscribed and sworn to before me the undersigned notary public this 19th day of February, 1948.  
Ann Fannin, Notary Public. My Commission expires Apr. 8, 1950. (Seal.)

[fol. 86]

[File endorsement omitted]

## IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

## ORDER ALLOWING APPEAL—Filed February 19, 1948

The petition of the Oklahoma Tax Commission for an appeal in the above case (being case No. 32678 styled the Magnolia Petroleum Company, a corporation, plaintiff in error, vs. Oklahoma Tax Commission, defendant in error, upon the docket of the Supreme Court of the State of Oklahoma) to the Supreme Court of the United States from the Supreme Court of the State of Oklahoma, and the assignments of error and the jurisdictional statement required by the rules of the Supreme Court of the United States having been filed herewith, and having been presented, and having been considered, together with the record of said cause, it is

Ordered, that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the [fol. 87] Supreme Court of the State of Oklahoma, as prayed in said petition, and that the Clerk of the Supreme Court of the State of Oklahoma prepare and certify a transcript of the record and proceedings in the above cause and transmit to the Supreme Court of the United States so that same shall be delivered to said court within forty days from the date thereof.

And the appellant, having presented to the Chief Justice of the Supreme Court of Oklahoma, good and sufficient security for cost, condition that appellant prosecute such appeal to effect (or having been excepted from the rule requiring security on account of said cause being prosecuted on behalf of the State of Oklahoma) and that if said appellant fails to make their plea good, they shall answer and pay all cost; and said bond or security for cost having been declared unnecessary in this case on account of said case being prosecuted on behalf of the State of Oklahoma in its sovereign capacity, no cost bond or other like security having been deemed necessary, none is required.

The appeal shall operate as a supersedeas, and the mandate of this court is hereby stayed and the effectiveness of



the judgment and order appealed from is hereby stayed pending the final determination of said appeal.

Dated this the 19th day of February, 1948.

Thurman S. Hurst, Chief Justice of the Supreme Court of Oklahoma: (Seal.)

Attest: Andy Payne, Clerk.

[fol. 88] STATE OF OKLAHOMA,

Oklahoma County, ss:

C. W. King of lawful age being first duly sworn deposes and says, that he served the foregoing order upon the counsel of record for the Magnolia Petroleum Company, plaintiff in error, in this court and appellee in the Supreme Court of the United States by depositing in the Post Office at Oklahoma City, with the correct amount of postage thereon, a letter containing a copy of said order correctly addressed to said counsel to-wit: Robert W. Richards, Attorney of record for appellee, Box 1828, Oklahoma City, Oklahoma.

C. W. King.

Subscribed and sworn to before me this 19 day of February, 1948. W. F. Lemons, Assistant Clerk.  
My Commission expires: ———, ———, ———. (Seal.)

[fols. 89-93] Citation in usual form showing service on Robert W. Richards, filed Feb. 19, 1948, omitted in printing.

[fol. 94]

[File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed February 19, 1948

To the Clerk of the Above Named Court:

You are hereby requested to make a transcript of the record in the above styled and numbered cause to be filed in the Supreme Court of the United States pursuant to an appeal allowed in said cause, and to include in such

transcript of the record the following, and no other, papers and exhibits, to-wit:

A full and complete transcript of the record certified to the Supreme Court of Oklahoma by the Oklahoma Tax Commission under date of June 21, 1946, and filed in the Supreme Court of Oklahoma, with petition in error attached, on June 26, 1946, including the following:

1. Petition in Error.
2. Amendment to Petition.
3. Court Minutes.
4. Journal Entry of Judgment.
5. Statement as to Contents of Case-Made.
6. Certificate of Court Clerk.
7. Certificate of Trial Judge.
8. Exhibits attached to pleadings.
9. Notice of intention to file suit for recovery of taxes.
10. Complete transcript and Case-Made (except as omitted by indication).
11. Petition for Rehearing.
12. All Stipulations.
13. Final Opinion and Decision of the Supreme Court.
14. Motion for Stay of Mandate.
15. Order Staying Mandate.
16. Petition for Appeal and Prayer for Reversal with Proof of Service.
17. Assignment of Errors with Proof of Service.
18. Jurisdictional Statement with Proof of Service.
19. Order Allowing Appeal with Proof of Service.
20. Citation to Appellee with Proof of Service.
- [fol. 96] 21. Praeceptum for Transcript of Record with Proof of Service.
22. Statement of Points to be Relied upon, with Proof of Service.
23. A full, complete and accurate index of the record required by this praecipe.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the Supreme Court of the United States, and to be filed in the office of the Clerk of the Supreme Court of the United States on or before the 29th day of April, 1948.

Mac Q. Williamson, Attorney General; Fred Hansen, First Asst. Attorney General; C. W. King, General Counsel, Oklahoma Tax Commission.

[fol. 97] STATE OF OKLAHOMA,  
Oklahoma County, ss:

C. W. King of lawful age first being duly sworn deposes and says that he deposited in the Post Office at Oklahoma City, with correct amount of postage thereon, a copy of this Praecept addressed to Robert W. Richards, Box 1828, Oklahoma City, Oklahoma, on this the 19th day of February 1948.  
C. W. King.

Subscribed and sworn to before me this 19th day of February, 1948. Ann Fannin, Notary Public. My Commission expires April 8, 1950. (Seal.)

[fol. 98] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ACKNOWLEDGMENT OF SERVICE—Filed February 19, 1948

Service is acknowledged of:

Praecept for Transcript of Record

Assignment of Errors

Citation on Appeal

Statement Directing Attention to Rule

Statement Directing Attention to Paragraph 3 of Rule 12 of the Court

Order Allowing Appeal

Statement as to Jurisdiction; all as of February 19, 1948.

Robert W. Richards, Attorney of Record for Appellee.

[fol. 99] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

STIPULATION AND DESIGNATION AS TO CONTENTS OF RECORD—  
Filed February 19, 1948

It is stipulated and Agreed by the parties hereto that the following instruments and exhibits shall be included in the



record on the appeal to the Supreme Court of the United States:

1. All pleadings, motions, stipulations and orders.
2. That only the exhibits appearing at the following enumerated pages shall be included in said record: 12, 13, 19, 20, 40, 41, 44, 45, 46, 52, 53, 54, 55, 57, 64, 65, 67, 69, 74, 78, 83, 85, 87, 89, 96, 109, 112, 114, 119, 121, 122, 123, 125, 129, 142-146, inclusive and 160.

[fol. 100] It is Further Stipulated and Agreed between the parties that the other trust patents which have been omitted from this record by agreement are substantially the same as that which appears at page 12 of the record and is included herein;

and that, the other oil and gas leases which have been omitted from the record by agreement are substantially the same as that appearing at page 13 and included herein, all of said oil and gas leases having been executed upon the same Departmental oil and gas lease form.

Dated this 18 day of Feb. 1948.

Robert W. Richards, Attorney for Magnolia Petroleum Company. C. W. King, General Counsel for Oklahoma Tax Commission.

[fol. 101] "EXHIBITS"

[fol. 102] EXHIBIT "A"

J. Frank Martin, Chairman; J. D. Dunn, Vice Chairman  
R. H. Sibley, member for H. D. Canfield, Secretary

OKLAHOMA TAX COMMISSION, STATE OF OKLAHOMA  
Oklahoma City, June 5th, 1944, Gross Production Division.

REGISTERED

Magnolia Petroleum Company, Magnolia Building, Dallas Texas.

GENTLEMEN.

You are hereby notified that the Oklahoma Tax Commission, in accordance with the provisions of Section 22, Article 2, Chapter 66 of the Oklahoma Session Laws of 1939, proposes to assess gross production tax and penalty and prora-

tion tax and penalty upon you and separately, upon each of your interests in leases for the period June 1st, 1942, to March 31, 1944, both inclusive, as particularly set out in detailed tax statements hereto attached and made a part hereof in amounts upon each lease as therein set out, to wit:

(Continued)

Remittances should be made payable to the Oklahoma Tax Commission and refer to Division.

[fol. 103]

Lease Name and Description	Gross Production Tax		
	Tax	Penalty to 6-1-1944	Total Tax and Penalty
Frank Davis N/2 NE/4 Section 15-7-4 Pottawatomie County, Oklahoma	\$1,599.58	320.00	\$1,919.58
3/4 interest in the Kla-da-ing lease N/2 NW/4 SW/4 Section 3-5-9 Caddo County, Oklahoma	125.90	21.93	147.83
Joseph Nona NW/4 Section 11-7-4 Pottawatomie County, Oklahoma	1,390.49	306.52	1,697.01
2/3 interest in the Pau Kune lease N/2 NE/4 Section 10-5-9 Caddo County, Oklahoma	10,170.47	2,006.17	12,176.64
Harry Saunders N/2 SW/4 Section 4-22-3 Pawnee County, Oklahoma	792.16	141.94	934.10
Tissoyo SE/4 Section 22-18-9W Stephens County, Oklahoma	668.78	116.92	785.70
Nicholas Vieux W3/4 of W/2 W/2 SE/4 Section 13-7-4 Pottawatomie County, Oklahoma	219.74	38.77	258.51
<b>TOTALS</b>	<b>\$14,967.12</b>	<b>\$2,952.25</b>	<b>\$17,919.37</b>

(Continued)

[fol. 104]

Proration Tax

Lease Name and Description	Tax	Penalty to 6-1-1944	Total Tax and Penalty
Frank Davis N/2 NE/4 Section 15-7-4 Pottawatomie County, Oklahoma 3/4 interest in the Kla-dawing lease N/2 NW/4 SW/4 Section 3-5-9 Caddo County, Oklahoma	\$31.31	\$6.48	\$37.79
Joseph Nona NW/4 Section 11-7-4 Pottawatomie County, Oklahoma 2/3 interest in the Pau Kune lease N/2 NE/4 Section 10-5-9 Caddo County, Oklahoma	2.53	.45	2.98
Harry Saunders N/2 SW/4 Section 4-22-3 Pawnee County, Oklahoma Tissoyo SE/4 Section 22-18-9W Stephens County, Oklahoma Nicholas Vieux W 3/4 of W/2 W/2 SE/4 Section 13-7-4 Pottawatomie County, Oklahoma	27.75	6.29	34.04
	211.50	43.41	254.91
	14.71	2.75	17.46
	14.09	2.60	16.69
	4.37	.81	5.18
TOTALS	\$306.26	\$62.79	\$369.05

(Continued)

[fol. 105] Section 22, Article 2, Chapter 66, Session laws of 1939, further provides that within thirty (30) days after the mailing of the notice provided for, the taxpayer may file with the Tax Commission a written protest under oath, signed by himself or his duly authorized agent, setting out the information required in Paragraph 3 of that Section and this Section further provides:

"If in such written protest the taxpayer shall request an oral hearing, the Tax Commission shall grant such hearing, and shall, by written notice advise the taxpayer of a date, which shall not be less than ten (10) days from the date of mailing of such written notice, when such taxpayer may appear before the Tax Commission and present arguments and evidence, oral or written, in support of its protest.

If any taxpayer fails to file such written protest within the period of thirty (30) days, as provided by this Section, then the Tax Commission shall immediately proceed to assess the tax and no appeal to the Supreme



Court from the Order of the Tax Commission assessing such tax shall be allowed under Section 26 of this Act; provided, the Tax Commission shall, for good cause shown, have authority to extend the period of thirty (30) days within which any taxpayer must file a protest."

You are notified that the Oklahoma Tax Commission proposes to assess the amount of tax and penalties designated above. Provision is included for your rights and privileges.

Yours very truly, Oklahoma Tax Commission, by  
J. Frank Martin, Chairman.

ws.

LLL:ws;mj.

[fol. 106]

(Copy)

### EXHIBIT "B"

BEFORE THE OKLAHOMA TAX COMMISSION

Case No. 1748

In the Matter of the Protest of MAGNOLIA PETROLEUM COMPANY, a Corporation, Against the Assessment of Gross Production and Proration Taxes on Production from Wild Tribes Indian Leases.

### Protest

Comes now the Magnolia Petroleum Company, a corporation and, in response to the demand of the Oklahoma Tax Commission made under date of June 5, 1944, for the payment of gross production tax and penalty, and proration tax and penalty on the lessee's share of oil and gas produced during the period from June 1, 1942, to March 31, 1944, both inclusive, from the seven (7) tracts of land known as Wild Tribes Indian Leases and situated in Caddo, Pawnee, Pottawatomie and Stephens Counties, State of Oklahoma, more particularly described as follows:

Frank Davis, N/2 NE/4 of Sec. 15-7N-4E,  
Pottawatomie County, Oklahoma;

3/4ths Interest in the Kla-da-ing Lease,  
N/2 NW/4 SW/4 of Section 3-5N-9W,  
Caddo County, Oklahoma;

Joseph Nona, NW/4 of Sec. 11-7N-4E,  
Pottawatomie County, Oklahoma;

[fol. 107] 2/3 Interest in the Pau-Kune Lease,  
N/2 NE/4 of Section 10-5N-9W,  
Caddo County, Oklahoma;

Harry Saunders, N/2 SW/4 Sec. 4-22N-3E,  
Pawnee County, Oklahoma;

Tissoyo, SE/4 of Sec. 22-1S-9W,  
Stephens County, Oklahoma;

Nicholas Vielx, W 3/4 of W/2 W/2-SE/4, Sec.  
13-7N-4E, Pottawatomie County, Oklahoma.

respectfully shows to the Tax Commission:

# I

That the claim asserted by the Tax Commission, in the total sum of \$18,288.42, is without merit in that the leases here involved are leases on the lands of restricted Indians, and that the leases and lessees thereof are Federal instrumentalities and not subject to the gross production tax or proration tax laws of the State of Oklahoma; and in that connection the protestant alleges that the Congress of the United States has never consented to the imposition of a gross production or proration tax by the State of Oklahoma upon the production from those leases, and by reason thereof, the State is without authority to levy such a tax thereon.

The protestant further states that the proposed assessment would violate the provisions of the Federal and State Constitutions and the Enabling Act under which the State [fol. 108] of Oklahoma was admitted to the Union.

# II

That the protestant has heretofore, during the period from June 1, 1942, to March 31, 1944, filed, from time to time and in all respects in the manner provided by law, its report with the Tax Commission of the State of Oklahoma, in all of which reports all of the production from the above-named leases, during the period of time involved herein, was set forth and specifically claimed as being exempt from the

gross production and proration tax laws of the State of Oklahoma.

### III

That under certain well-known decisions of the Supreme Court of the United States and the Supreme Court of the State of Oklahoma, the State laws relating to the gross production and proration taxes have no application whatsoever to the leases on the lands of restricted members of the so-called Wild Tribes of Indians, or to oil or gas produced therefrom. That the protestant has heretofore in the utmost good faith, acting upon the above-mentioned controlling decisions as being the law of the land, and by reason thereof, paid ad valorem taxes in lieu of gross production taxes. That those decisions have long been regarded by the administrative, legal, and executive officers of the State as being in all respects binding upon the State and County [fol. 109] authorities; and the protestant states that those decisions have not to this date been modified, reversed or overruled.

### IV

The protestant further states that in addition to the above-mentioned controlling decisions, the Legislature of the State of Oklahoma, in the laws enacted in the year 1925, Chapter 20, Section 3 (68 O. S. A., Sec. 832) took cognizance of the exempt character of the oil and gas produced from the lands here involved, in the following legislative enactment, namely:

"In all cases of overpayment, duplicate payment or payment made in error on account of the production being derived from restricted Indian lands and therefore exempt from taxation, the State Auditor, by and with the approval of the State Board of Equalization, after an audit by the State Examiner and Inspector, is authorized to refund any such overpaid, duplicate or erroneously paid gross production taxes out of any gross production tax funds in his hands from the same county from which the original tax was derived and not apportioned to the State Treasurer to be distributed as provided by law."

and that the attempt here made by the Tax Commission to collect gross production and proration taxes on oil and gas



produced from leases on the lands herein involved violates the provisions of the above-named statute and the provisions [fol. 110] of the State and Federal authorities.

# V

That the State of Oklahoma is without jurisdiction and the Gross Production and Proration Tax Statutes have no application to the leases or to the oil and gas produced from the lands herein involved, for the reason that they are under the exclusive jurisdiction of the United States.

Wherefore, Protestant respectfully requests that it be granted a hearing before the Oklahoma Tax Commission, for the presentation of evidence and argument in support of this protest, and prays that the claim herein asserted be dismissed.

Magnolia Petroleum Company, by ———, Its Attorney.

STATE OF OKLAHOMA,  
Oklahoma County, ss:

Robert W. Richards, of lawful age, being first duly sworn, upon oath states, that he is the attorney for the Protestant, [fol. 111] Magnolia Petroleum Company, in the foregoing protest; that he is duly authorized by the Protestant to verify this protest on its behalf; that he has read the foregoing protest and that the statements and allegations therein made are true and correct, as he verily believes.

Subscribed and sworn to before me this 1st day of July, 1944. ———. My Commission Expires: ———.

Receipt of the foregoing protest is acknowledged this 1st day of July, 1944.

(S.) A. L. Herr, Attorney for the Oklahoma Tax Commission.

RWR:I  
6-30-44

[fol. 112]

## EXHIBIT "A"

J. Frank Martin, Chairman; J. D. Dunn, vice-chairman  
 R. M. Sibley, Member H. D. Canfield, secretary  
 Gross Production Division.

(Seal).

## OKLAHOMA TAX COMMISSION, STATE OF OKLAHOMA

Oklahoma City, June 5, 1944

Registered

Magnolia Petroleum Company  
 Magnolia Building  
 Dallas, Texas

Gentlemen:

- You are hereby notified that the Oklahoma Tax Commission, in accordance with the provisions of Section 22, Article 2, Chapter 66 of the Oklahoma Session Laws of 1939, proposes to assess gross production tax and penalty and proration tax and penalty upon you and upon your interest in the Robedeaux lease for the period June 1st, 1942 to March 31st, 1944, both inclusive, as particularly set out in a detailed tax statement hereto attached and made a part hereof, in amounts upon your interest in the lease as therein set out, to-wit:

(Continued)

[fol. 113]

Lease Name and Description	Gross Production Tax		
	Tax	Penalty to 6-1-1944	Total Tax and Penalty
R. H. Robedeaux S E Section 32-23-3 Pawnee County, Oklahoma	\$249.67	\$53.72	\$303.39
<b>TOTALS</b>	<b>\$249.67</b>	<b>\$53.72</b>	<b>\$303.39</b>

(Continued)

[fol. 114]

Lease Name and Description	Proration Tax		
	Tax	Penalty to 6-1-1944	Total Tax and Penalty
R. H. Robedeaux S E Section 32-23-3 Pawnee County, Oklahoma	\$4.90	\$1.08	\$5.98
<b>TOTALS</b>	<b>\$4.90</b>	<b>\$1.08</b>	<b>\$5.98</b>

(Continued)

[fol. 115] Section 22, Article 2, Chapter 66, Session Laws of 1939, further provides that within thirty (30) days after the mailing of the notice provided for, the taxpayer may file with the Tax Commission a written protest under oath, signed by himself or his duly authorized agent, setting out the information required in Paragraph 3 of that Section and this section further provides:

"If in such written protest the taxpayer shall request an oral hearing, the Tax Commission shall grant such hearing, and shall by written notice, advise the taxpayer of a date, which shall not be less than ten (10) days from the date of mailing of such written notice when such taxpayer may appear before the Tax Commission and present arguments and evidence, oral or written, in support of its protest.

If any taxpayer fails to file such written protest within the period of thirty (30) days, as provided by this section, then the Tax Commission shall immediately proceed to assess the tax and no appeal to the Supreme Court from the Order of the Tax Commission assessing such tax shall be allowed under Section 26 of this Act; provided, the Tax Commission shall, for good cause shown, have authority to extend the period of thirty (30) days within which any taxpayer must file a protest."

You are notified that the Oklahoma Tax Commission proposes to assess the amount of tax and penalties designated above. Provision is included for your rights and privileges.

Yours very truly, Oklahoma Tax Commission, By J.  
Frank Martin, Chairman.

LLJ:ws:mj.



## BEFORE THE OKLAHOMA TAX COMMISSION

Case No. 1749

In the Matter of the Protest of MAGNOLIA PETROLEUM COMPANY, a Corporation, Against Assessment of Gross Production and Proration Taxes on Production from Wild Tribes Indian Leases

## PROTEST

Comes now the Magnolia Petroleum Company, a corporation, and, in response to the demand of the Oklahoma Tax Commission made under date of June 5, 1944, for the payment of gross production tax and penalty, and proration tax and penalty on the lessee's share of oil and gas produced during the period from June 1, 1942, to March 31, 1944, both inclusive, from the following tract of land, known as a Wild Tribes Indian Lease and situated in Pawnee County, State of Oklahoma, and more particularly described as R. H. Robedaux Lease—The SE $\frac{1}{4}$  of Section 32-23N-3E, in Pawnee County, Oklahoma, respectfully shows to the Tax Commission:

[fol. 117]

I

That the claim asserted by the Tax Commission in the total sum of \$309.37 is without merit in that the lease here involved is a lease on the land of a restricted Indian, and the lease and lessees thereof are Federal instrumentalities and not subject to the Gross Production Tax or Proration Tax Laws of the State of Oklahoma; and in that connection the protestant alleges that the Congress of the United States has never consented to the imposition of a gross production or proration tax by the State of Oklahoma upon the production from such leases, and by reason thereof, the State is without authority to levy such a tax thereon.

The Protestant further states that the proposed assessment would violate the provisions of the Federal and State Constitutions and the Enabling Act under which the State of Oklahoma was admitted to the Union.

## II

That the Protestant has heretofore, during the period from June 1, 1942, to March 31, 1944, filed, from time to time and in all respects in the manner provided by law, its reports with the Oklahoma Tax Commission, in all of which reports all of the production from the above-named lessee, during the period of time involved herein, was set forth and specifically claimed as being exempt from the Gross Production and Proration Tax Laws of the State of Oklahoma.

[fol. 118]

## III

That under certain well-known decisions of the Supreme Court of the United States and the Supreme Court of the State of Oklahoma, the State laws relating to the gross production and proration taxes have no application whatsoever to the leases on lands of restricted members of the so-called Wild Tribes of Indians, or to oil or gas produced therefrom. That the Protestant has heretofore in the utmost good faith, acting upon the above-mentioned controlling decisions as being the law of the land, and by reason thereof, paid as valorem taxes in lieu of gross production taxes. That those decisions have long been regarded by the administrative, legal, and executive officers of the State as being in all respects binding upon the State and County authorities; and the Protestant states that those decisions have not to this date been modified, reversed or overruled.

## IV

The Protestant further states that in addition to the above-mentioned controlling decisions, the Legislature of the State of Oklahoma, in the laws enacted in the year 1925, Chapter 20, Section 3 (68 O. S. A., Sec. 832) took cognizance of the exempt character of the oil and gas produced from the lands here involved, in the following legislative enactment, namely:

[fol. 119] "In all cases of overpayment, duplicate payment or payment made in error on account of the production being derived from restricted Indian lands and therefore exempt from taxation, the State Auditor, by and with the approval of the State Board of Equalization, after an audit by the State Examiner and Inspector, is authorized to refund any such overpaid,

duplicate or erroneously paid gross production taxes out of any gross production tax funds in his hands from the same county from which the original tax was derived and not apportioned to the State Treasurer to be distributed as provided by law,"

and that the attempt here made by the Tax Commission to collect gross production and proration taxes on oil and gas produced from the lease on the land herein involved violates the provisions of the above-named statute and the provisions of the State and Federal authorities.

## V

That the State of Oklahoma is without jurisdiction, and the Gross Production and Proration Tax Statutes have no application to the lease or the oil and gas produced from the land herein involved, for the reason that the same is under the exclusive jurisdiction of the United States.

Wherefore, Protestant respectfully requests that it be granted a hearing before the Oklahoma Tax Commission, for the presentation of evidence and argument in support of this protest, and prays that the claim herein asserted be dismissed.

Magnolia Petroleum Company, by ———, Its Attorney.

[fol. 120] STATE OF OKLAHOMA,

County of Oklahoma, ss:

Robert W. Richards, of lawful age, being first duly sworn, upon oath states, that he is the attorney for the Protestant, Magnolia Petroleum Company, in the foregoing protest; that he is duly authorized by the Protestant to verify this protest on its behalf; that he has read the foregoing protest and that the statements and allegations therein made are true and correct, as he verily believes.

Subscribed and sworn to before me this 1st day of July, 1944. ———, Notary Public. My Commission Expires ———.

Receipt of the foregoing protest is acknowledged this 1st day of July, 1944.

(S.) A. L. Herr, Attorney for the Oklahoma Tax Commission.

RWR:I:6-30-44.



[fol. 121]

## EXHIBIT "A"

J. Frank Martin, Chairman; J. D. Dunn, Vice-Chairman;  
R. H. Sibley, Member; H. D. Canfield, Secretary.

## Gross Production Division

Oklahoma Tax Commission, State of Oklahoma, Oklahoma  
City

June 5th, 1944.

## REGISTERED

Magnolia Petroleum Company, Magnolia Building, Dallas,  
Texas.

GENTLEMEN:

You are hereby notified that the Oklahoma Tax Commission in accordance with the provisions of Section 22, Article 2, Chapter 66 of the Oklahoma Session Laws of 1939 proposes to assess gross production tax and penalty and proration tax and penalty upon you and upon your  $\frac{1}{4}$  interest in the Kla-da-ing lease, for the period June 1, 1942, to March 31, 1944, both inclusive, as particularly set out in a detailed Tax Statement hereto attached and made a part hereof, in amounts, upon your  $\frac{1}{4}$  interest in the lease as therein set out, to-wit:

(Continued)

Remittance should be made payable to the Oklahoma Tax Commission and refer to Division.

[fol. 122]

## Gross Production Tax

Lease Name and Description	Gross Production Tax		
	Tax.	Penalty to 6-1-1944	Total Tax and Penalty
$\frac{1}{4}$ interest in the Kla-da-ing lease N NWSW 3-5-9, Caddo County, Oklahoma	\$41.97	\$7.28	\$49.25
TOTALS	\$41.97	\$7.28	\$49.25

(Continued)

[fol. 123]

Lease Name and Description	Proration Tax		
	Tax	Penalty to 6-1-1944	Total Tax and Penalty
1/4 interest in the Kla-da-ing lease N NWSW 35-9, Caddo County, Oklahoma	\$ 81	\$ 12.	\$ .93
<b>TOTALS</b>	<b>\$ 81</b>	<b>\$ 12</b>	<b>\$ .93</b>

(Continued)

[fol. 124]—Section 22, Article 2, Chapter 66, Session Laws of 1939, further provides that within thirty (30) days after the mailing of the notice provided for, the taxpayer may file with the Tax Commission a written protest under oath, signed by himself or his duly authorized agent, setting out the information required in Paragraph 3 of that Section and this Section further provides:

“If in such written protest the taxpayer shall request an oral hearing, the Tax Commission shall grant such hearing, and shall, by written notice advise the taxpayer of a date, which shall not be less than ten (10) days from the date of mailing of such written notice, when such taxpayer may appear before the Tax Commission and present arguments and evidence, oral or written, in support of its protest.

If any taxpayer fails to file such written protest within the period of thirty (30) days, as provided by this Section, then the Tax Commission shall immediately proceed to assess the tax and no appeal to the Supreme Court from the Order of the Tax Commission assessing such tax shall be allowed under Section 26 of this Act; provided, the Tax Commission shall, for good cause shown, have authority to extend the period of thirty (30) days within which any taxpayer must file a protest.”

You are notified that the Oklahoma Tax Commission proposes to assess the amount of tax and penalties designated above. Provision is included for your rights and privileges.

Yours very truly, Oklahoma Tax Commission, by J.  
Frank Martin, Chairman.

ELL: ws; mj. Incl.

[fol. 125]

## EXHIBIT "B"

BEFORE THE OKLAHOMA TAX COMMISSION

Case No. 1750

In the Matter of the Protest of the MAGNOLIA PETROLEUM COMPANY, a Corporation, Against Assessment of Gross Production and Proration Taxes on Production from Wild-Tribes Indian Leases

## PROTEST

Comes now the Magnolia Petroleum Company, a corporation, and, in response to the demand of the Oklahoma Tax Commission made under date of June 5, 1944, for the payment of gross production tax and penalty, and proration tax and penalty on the lessee's share of oil and gas produced during the period from June 1, 1942, to March 31, 1944, both inclusive, from the following tract of land, known as a Wild Indian Tribes Indian Lease and situated in Caddo County, State of Oklahoma, and more particularly described as:

"1/4th Interest in the Kla-da-ing Lease, N/2 NW/4 SW/4 of Section 3-5N-9W, in Caddo County, Oklahoma,

respectfully shows to the Tax Commission:

[fol. 126]

I

That the claim asserted by the Tax Commission in the total sum of \$50.18 is without merit in that the lease herein involved is a lease on the land of a restricted Indian, and the lease and lessees thereof are Federal instrumentalities and not subject to the Gross Production Tax or Proration Tax Laws of the State of Oklahoma; and in that connection the Protestant alleges that the Congress of the United States has never consented to the imposition of a gross production or proration tax by the State of Oklahoma upon the production from such leases, and by reason thereof, the State is without authority to levy such a tax thereon.

The Protestant further states that the proposed assessment would violate the provisions of the Federal and State Constitutions and the Enabling Act under which the State of Oklahoma was admitted to the Union.



## II

That the Protestant has heretofore, during the period from June 1, 1942, to March 31, 1944, filed, from time to time and in all respects in the manner provided by law, its reports with the Oklahoma Tax Commission, in all of which reports all of the production from the above-named lease, [fol. 127] during the period of time involved herein, was set forth and specifically claimed as being exempt from the Gross Production and Proration Tax Laws of the State of Oklahoma.

## III

That under certain well-known decisions of the Supreme Court of the United States and the Supreme Court of the State of Oklahoma, the State laws relating to the gross Production and proration taxes have no application whatsoever to the leases on lands of restricted members of the so-called Wild Tribes of Indians, or to oil or gas produced therefrom. That the Protestant has heretofore in the utmost good faith, acting upon the above-mentioned controlling decisions as being the law of the land, and by reason thereof, paid ad valorem taxes in lieu of gross production taxes. That those decisions have long been regarded by the administrative, legal, and executive officers of the State as being in all respects binding upon the State and County authorities; and the Protestant states that those decisions have not to this date been modified, reversed or overruled.

[fol. 128]

## IV

The Protestant further states that in addition to the above-mentioned controlling decisions, the Legislature of the State of Oklahoma, in the laws enacted in the year 1925, Chapter 20, Section 3 (68 O. S. A., Sec. 832) took cognizance of the exempt character of the oil and gas produced from the lands here involved, in the following legislative enactment, namely:

"In all cases of overpayment, duplicate payment or payment made in error on account of the production being derived from restricted Indian lands and therefore exempt from taxation, the State Auditor, by and with the approval of the State Board of Equalization,

after an Audit by the State Examiner and Inspector, is authorized to refund any such overpaid, duplicate or erroneously paid gross production taxes out of any gross production tax funds in his hands from the same county from which the original tax was derived and not apportioned to the State Treasurer to be distributed as provided by law,"

and that the attempt here made by the Tax Commission to collect gross production and proration taxes on oil and gas produced from the lease on the land herein involved [fol. 129] violates the provisions of the above-named statute and the provisions of the State and Federal authorities.

### V

That the State of Oklahoma is without jurisdiction, and the Gross Production and Proration Tax Statutes have no application to the lease or the oil and gas produced from the land herein involved, for the reason that the same is under the exclusive jurisdiction of the United States,

Wherefore, protestant respectfully requests that it be granted a hearing before the Oklahoma Tax Commission, for the presentation of evidence and argument in support of this protest, and prays that the claim herein asserted be dismissed.

Magnolia Petroleum Company, By — — —, Its Attorney.

[fol. 130] STATE OF OKLAHOMA,  
Oklahoma County, ss:

Robert W. Richards, of lawful age, being first duly sworn, upon oath states, that he is the attorney for the Protestant, Magnolia Petroleum Company, in the foregoing protest; that he is duly authorized by the Protesant to verify this protest on its behalf; that he has read the foregoing protest and that the statements and allegations therein made are true and correct, as he verily believes.

Subscribed and sworn to before me this 1st day of  
July, 1944. — — —, Notary Public. My Com-  
mission Expires: — — —.

Receipt of the foregoing protest is acknowledged this 1st day of July, 1944..

(S.) A. L. Herr, Attorney for the Oklahoma Tax Commission.

RWR-I: 6-30-44.

[fol. 131]

EXHIBIT "C"

3630 Patent

The United States of America, to the Heirs of Mary Molino, 1777598. 32382-39: L. O. 943 & 942.

Filed for record Oct. 19, 1939 at 9:30 A.M.

(Recorded in Book 88 of Deeds, Page 191) Eddie Cole County Clerk (Seal)

The United States of America, to all to Whom These Presents shall come, Greeting:

Whereas, an Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to the claimants, the heirs of Mary Moleno, devisee of Moleno, heir of Wau-co-chah and Kla-dah-ing (Black Apache) Apache Indians, for an undivided one-fourth interest in and to the east half of the northeast quarter of Section eight, the west half of the Northwest quarter of Section nine, the west half of the southwest quarter of Section three, and the north half of the northwest quarter of Section ten in Township five north of Range nine west of the Indian Meridian, Oklahoma, excepting from the effect of this conveyance however, that certain parcel of ground containing twelve acres and nineteen hundredths of an acre, in the west half of the southwest quarter of said Section three, heretofore conveyed to the St. Louis-San Francisco Railway Company, by deed approved March 3, 1930, and recorded in Indian Office Deed Book, Volume 58 at page 63 and also, that certain parcel of ground containing eight acres and thirteen hundredths of an acre in the northwest quarter of the southwest quarter of said section three, heretofore conveyed to the Magnolia Petroleum Company with mineral rights reserved, by deed [fol. 132] approved July 31, 1930, and recorded in the Indian Office Deed Book, Volume 59 at page 85 in the Office of the Commissioner of Indian Affairs, containing after



making the exceptions above specified, two hundred ninety-nine acres and sixty-eight hundredths of an acre:

Now Know Ye, That the United States of America, in consideration of the premises, has given and Granted and by these presents does give, and grant, unto the said claimants and to the heirs of the said claimants, an undivided one-fourth interest in the Land above described; to Have and to Hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimants and to the heirs and assigns of the said claimants forever.

In Testimony Whereof, I, Franklin D. Roosevelt, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the Twenty-fifth day of September, in the year of our Lord one thousand nine hundred and thirty-nine and of the Independence of the United States the One hundred and sixty-fourth.

By the President, Franklin D. Roosevelt, by Jeanne Kavanagh, Secretary. R. S. Clinton, Acting Recorder of the General Land Office.

(Seal) Recorded: Patent Number 1105385.

[fol. 133]

EXHIBIT "A"

Oklahoma Tax Commission

State of Oklahoma, Oklahoma City, June 5th, 1944.

J. Frank Martin, Chairman, J. D. Dunn, Vice Chairman,  
R. H. Sibley, Member, H. D. Canfield, Secretary.

Gross Production Division

Registered

Magnolia Petroleum Company  
Magnolia Building  
Dallas, Texas.

GENTLEMEN:

You are hereby notified that the Oklahoma Tax Commission, in accordance with the provisions of Section 22, Article 2, Chapter 66, of the Oklahoma Session Laws of 1939, proposes to assess gross production tax and penalty and prora-

tion tax and penalty upon you and upon your  $\frac{1}{3}$  interest in the Pau Kune lease for the period June 1st, 1942 to March 31, 1944, both inclusive, as particularly set out in detailed tax statements hereto attached and made a part hereof in amounts upon your  $\frac{1}{3}$  interest in the lease as therein set out, to-wit:

Remittances should be made payable to the Oklahoma Tax Commission and refer to Division.

[fol. 134]

Gross Production Tax

Lease Name and Description	Tax	Penalty to 6-1-1944	Total Tax and Penalty
$\frac{1}{3}$ interest in the Pau Kune lease N/2 NE/4 Section 10-5-9, Caddo County, Oklahoma	\$5,085.24	\$1,003.06	\$6,088.30
<b>TOTALS</b>	\$5,085.24	\$1,003.06	\$6,088.30

[fol. 135]

Proration Tax

Lease Name and Description	Tax	Penalty to 6-1-1944	Total Tax and Penalty
$\frac{1}{3}$ interest in the Pau Kune lease N NE Sec. 10-5-9, Caddo County, Oklahoma	\$105.74	\$21.70	\$127.44
<b>TOTALS</b>	\$105.74	\$21.70	\$127.44

[fol. 136] Section 22, Article 2, Chapter 66, Session Laws of 1939, further provides that within thirty (30) days after the mailing of the notice provided for, the taxpayer may file with the Tax Commission a written protest under oath, signed by himself or his duly authorized agent, setting out the information required in Paragraph 3 of that Section and this Section further provides:

"If in such written protest the taxpayer shall request an oral hearing, the Tax Commission shall grant such hearing, and shall, by written notice advise the taxpayer of a date, which shall not be less than ten (10) days from the date of mailing of such written notice, when such taxpayer may appear before the Tax Commission and present arguments and evidence, oral or written, in support of its protest.

If any taxpayer fails to file such written protest within the period of thirty (30) days, as provided by this

Section, then the Tax Commission shall immediately proceed to assess the tax and no appeal to the Supreme Court from the Order of the Tax Commission assessing such tax shall be allowed under Section 26 of this Act; provided, the Tax Commission shall, for good cause shown, have authority to extend the period of thirty (30) days within which any taxpayer must file a protest."

You are notified that the Oklahoma Tax Commission proposes to assess the amount of tax and penalties designated above. Provision is included for your rights and privileges.

Yours very truly, Oklahoma Tax Commission, by J. Frank Martin, Chairman.

LLL: ws,mj, Incl.

[fol. 137]

### EXHIBIT "B"

Before the Oklahoma Tax Commission

Case No. 1751

In the Matter of the Protest of MAGNOLIA PETROLEUM COMPANY, a Corporation, Against Assessment of Gross Production and Proration Taxes on Production from Wild Tribes Indian Leases

### PROTEST

Comes now the Magnolia Petroleum Company, a corporation, and, in response to the demand of the Oklahoma Tax Commission made under date of June 5, 1944, for the payment of gross production tax and penalty, and proration tax and penalty on the lessee's share of oil and gas produced during the period from June 1, 1942, to March 31, 1944, both inclusive, from the following tract of land, known as a Wild Tribes Indian Lease and situated in Caddo County, State of Oklahoma, and more particularly described as:  $\frac{1}{3}$  interest in the Pan Kune Lease, N/2 NE/4 of Section 10-



5N-9W, in Caddo County, Oklahoma, respectfully shows to the Tax Commission:

## I

That the claim asserted by the Tax Commission in the Total sum of \$6,215.74 is without merit in that the lease herein involved is a lease on the land of a restricted Indian, and the lease and lessees thereof are Federal instrumentali-[fol. 138] ties and not subject to the Gross Production Tax or Proration Tax Laws of the State of Oklahoma; and in that connection the Protestant alleges that the Congress of the United States has never consented to the imposition of a gross production or proration tax by the State of Oklahoma upon the production from such leases, and by reason thereof, the State is without authority to levy such a tax thereon.

The Protestant further states that the proposed assessment would violate the provisions of the Federal and State Constitution and the Enabling Act under which the State of Oklahoma was admitted to the Union.

## II

That the Protestant has heretofore, during the period from June 1, 1942, to March 31, 1944, filed, from time to time and in all respects in the manner provided by law, its reports with the Oklahoma Tax Commission, in all of which reports all of the production from the above-named lease, during the period of time involved herein, was set forth and specifically claimed as being exempt from the Gross Production and Proration Tax Laws of the State of Oklahoma.

[fol. 139]

## III

That under certain well-known decisions of the Supreme Court of the United States and the Supreme Court of the State of Oklahoma, the State laws relating to the gross production and proration taxes have no application whatsoever to the leases on lands of restricted members of the so-called Wild Tribes of Indians, or to oil or gas produced therefrom. That the protestant has heretofore in the utmost good faith, acting upon the above-mentioned controlling decisions as being the law of the land, and by reason thereof, paid ad valorem taxes in lieu of gross production taxes. That those decisions have long been regarded by the

administrative, legal, and executive officers of the State as being in all respects binding upon the State and County authorities; and the Protestant states that those decisions have not to this date been modified, reversed or overruled.

#### IV

The Protestant further states that in addition to the above mentioned controlling decisions, the Legislature of the State of Oklahoma, in the laws enacted in the year 1925, Chapter 20, Section 3 (68 O. S. A., Sec. 832) took cognizance of the exempt character of the oil and gas produced from the lands here involved, in the following legislative enactment, namely:

[fol. 140] "In all cases of overpayment, duplicate payment or payment made in error on account of the production being derived from restricted Indian lands and therefore exempt from taxation, the State Auditor, by and with the approval of the State Board of Equalization, after an audit by the State Examiner and Inspector, is authorized to refund any such overpaid, duplicate or erroneously paid gross production taxes out of any gross production tax funds in his hands from the same county from which the original tax was derived and not apportioned to the State Treasurer to be distributed as provided by law."

and that the attempt here made by the Tax Commission to collect gross production and proration taxes on oil and gas produced from the lease on the land herein involved violates the provisions of the above-named statute and the provisions of the State and Federal authorities.

#### V

That the State of Oklahoma is without jurisdiction, and the Gross Production and Proration Tax Statutes have no application to the lease or the oil and gas produced from the land herein involved, for the reason that the same is under the exclusive jurisdiction of the United States.

[fol. 141] Wherefore, Protestant respectfully requests that it be granted a hearing before the Oklahoma Tax Commission, for the presentation of evidence and argument in



# The United States of America,

To all to whom these Presents shall come, GREETING:

Whereas, There has been deposited in the General Land Office of the United States a schedule of allotments of land, dated Sept. 15, 1891, from the Commissioner of Indian Affairs, approved by the Secretary of the Interior Sept. 16, 1891, whereby it appears that, under the provisions of the Act of Congress approved February 8, 1887, (24 Stat. 388,) as amended by the Act of Congress of March 3, 1891, (26 Stats 1019), on Mic-puc, or Frank Davis, an Indian of the Ottawa tribe or band, has been allotted the following-described land, viz:

The north east quarter of section fifteen, in township seven north of Range four East of the Indian Meridian, Oklahoma Territory, containing one hundred and sixty acres.

Estimated under Act of  
May 24, 1910  
B LIST 15 23

Now, Know Ye, That the United States of America, in consideration of the premises and in accordance with the provisions of the fifth section of said Act of Congress of the 8th February, 1887, HEREBY DECLARES that it does and will hold the land thus allotted (subject to all the restrictions and conditions contained in said fifth section) for the period of twenty-five years, in trust for the sole use and benefit of the said Mic-puc or Frank Davis, or, in case of his decease, for the sole use of his heirs, according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian.

benefit of the said Mic-puc or Frank Davis

or, in case of his decease, for the sole use of his heirs, according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, on his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or encumbrance whatsoever: Provided, That the President of the United States may, in his discretion, extend the said period.

In Testimony Whereof, I, Benjamin Harrison, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, this nineteenth day of January, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and twenty-fourth.

By the President:

Benjamin Harrison

By

C. Macfarland, Asst. Secretary.

D. P. Roberts

Recorder of the General Land Office

U.S.

DEPARTMENT

Washington

at the  
office

at the  
office

in this

Washington



I-94-Ind-758

EXHIBIT "C-2"

Lease No. 10480

TR.

Form 5 154 n

# OIL AND GAS MINING LEASE—ALLOTTED INDIAN LANDS

Shawnee Indian

Reservation Shawnee, Okla.

OFFICE J.

THIS INDENTURE OF LEASE, made and entered into in quadruplicate on this 13th day of March

by and between Frank Davis or Mus- pus b-1568 and his wife Alice Davis

Asher R # 2 of State of Oklahoma

allottee No. 809 of the Cit. Pottawatomie tribe of Indians, party of the first part, hereinafter designated as

lessor, and John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plunly and W. C. Proctor, Trustees for Magbolia Petroleum Company

of Galveston State of Texas, party of the second part, hereinafter called the lessee, under and in pursuance of the provisions of the act of Congress approved March 3, 1909 (35 Stat. L. 781-783), and the regulations approved by the Secretary of the Interior, September 3, 1912;

WITNESSETH:

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations, and conditions hereinafter contained, and hereby agreed to be paid, observed, and performed by the lessee, do hereby demise, grant, lease, and let unto the lessee for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil and gas shall be found in paying quantities, all the oil deposits and natural gas in or under the

following-described tract of land, lying and being within the county of Pottawatomie

State of Oklahoma to wit: The N/2 of the NE 1/4

28945

15

7 North



and as much longer thereafter as oil and gas shall be found in paying quantities, all the oil deposits and natural gas in or under the

following-described tract of land, lying and being within the county of **Pottawatomie**

State of **Oklahoma** to wit: The **N/2 of the NE 1/4**

28945

of section **15** township **7 North** range **4 east** of the **Indian** Meridian,

and containing **80** acres, more or less, with the exclusive right to prospect for, extract, pipe, store, and remove oil and natural gas, and to occupy and use so much only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas, also the right to obtain from wells or other sources on said land, by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to pay or cause to be paid to the Superintendent of Indian School or other officer of the United States having jurisdiction over the leased premises, hereinafter called the officer in charge, for the use and benefit of the lessor, as royalty,

the sum of **12 1/2** per cent of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or removal of the oil. And the lessee shall pay as royalty on each gas-producing well three hundred dollars per annum in advance, to be calculated from the date of commencement of utilization: *Provided*, That in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree upon a royalty which will become effective as a part of this lease: *Provided further*, That in case of gas wells of small volume or where the wells produce both oil and gas or oil and gas and salt water to such an extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in

**his** residence on the leased premises, provided there be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas-producing well which can not profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desire to retain gas-producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from date of discovery of gas, on each gas-producing well the gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty-five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.



3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to the officer in charge, for the use and benefit of the lessor, as advanced royalty, from the date of the approval of this lease, fifteen cents per acre per annum, in advance, for the first and second years; thirty cents per acre per annum, in advance, for the third and fourth years; seventy-five cents per acre in advance, for the fifth year; and one dollar per acre per annum, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties for the year for which the payment of advanced royalty is made, and the lessee hereby agree that said advance royalty when paid shall not be refunded to

the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from ~~their~~ obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on the land covered by this lease, and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to the officer in charge, for the use and benefit of the lessor, for each whole year the completion of such well is delayed, after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year, and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in anywise operate to release or relieve the lessee from the covenant and obligation to pay such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose, to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells, lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would accrue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled, or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirement shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in ~~their~~ occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to the lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted; the lessee shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting the tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines, and machinery, and the casing of all dry or exhausted wells, which shall remain the property of the lessee and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; shall not permit any nuisance to be maintained on the premises under lessee control, nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the same so as effectually to shut off all water from the oil-bearing stratum, or in the manner required by

parties hereto that offset wells shall be drilled, or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirement shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in ~~their~~ occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to the lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted; the lessee shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting the tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines, and machinery, and the casing of all dry or exhausted wells, which shall remain the property of the lessee and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; shall not permit any nuisance to be maintained on the premises under lessee control, nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the same so as effectually to shut off all water from the oil-bearing stratum, or in the manner required by the laws of the State in which the lands are situated.

6. The lessee shall keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchasers, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all improvements, tools, movable machinery, and all other personal chattels used in operating said property, and upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty.

The lessee shall submit quarterly reports, whether oil royalty is paid by the pipe line company or other purchaser, to the officer in charge within fifteen days after March 31, June 30, September 30, and December 31 of each year upon prescribed forms, showing manner of operation, total production during the quarter, and all receipts during the quarter from any operations under the lease for the benefit of the lessor or the lessee, or both, giving the amount of each payment, the name of the party making same, and the nature of the operations from which the money covered by such payment was derived.

7. The lessee may at any time, by paying to the officer in charge all amounts then due as provided herein, and the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder: *Provided*, That if this lease has been recorded, lessee shall execute a release and record the same in the proper county recording office: *Provided further*, That in the event the trust period expires or the lessor be granted a patent in fee, the lessee may surrender all the undeveloped portion of the leased premises, by paying the officer in charge all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations prescribed by the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: *Provided*, That no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of any of the substantial terms and conditions of this lease, the Secretary of the Interior (or the lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right at any time after thirty days' notice to the lessee



support of this protest, and prays that the claim herein asserted be dismissed.

Magnolia Petroleum Company, by ———, Its Attorney.

STATE OF OKLAHOMA,  
Oklahoma County, ss:

Robert W. Richards, of lawful age, being first duly sworn, upon oath states, that he is the attorney for the Protestant, Magnolia Petroleum Company, in the foregoing protest; that he is duly authorized by the Protestant to verify this protest on its behalf; that he has read the foregoing protest and that the statements and allegations therein made are true and correct, as he verily believes.

Subscribed and sworn to before me this 1st day of July, 1944. ———, Notary Public. My Commission Expires ———.

Receipt of the foregoing protest is acknowledged this 1st day of July, 1944. (S.) A. L. Herr, Attorney for the Oklahoma Tax Commission.

RWR-I:6-30-44.



Note:

Copy below is attached to  
Page 74.

THE STATE OF TEXAS,  
COUNTY OF DALLAS.

03990

10

BEFORE ME, a Notary Public in and for said State and County, on this 30th day of March, 1923, personally appeared E. R. BROWN, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as Vice-President of MAGNOLIA PETROLEUM COMPANY, a joint stock association, and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such association, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year last above written.

My Commission Expires:  
Jan 1st, 1923.

Wesley Reed  
Notary Public



specifying the terms or conditions violated, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian Office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or bonds as may be required by said Secretary, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restrictions on alienation shall be removed from all the leasehold premises described above, by the trust period expiring and the lessor being given a patent in fee to the lands, or by the lessor being granted a patent in fee prior to the termination of his trust patent, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to the officer in charge shall thereafter be made to lessor or the then owner of said lands in person, or be deposited to the credit of said lessor or his assigns at such place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors, and lawful assigns of the parties hereto.

14. In witness whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

Two witnesses to execution by lessor.

*Reeford*  
St. Joe, Oklahoma

*C. R. Harryman*  
Shawnee, Oklahoma

Two witnesses to execution by lessee

*Irma Ross*

Shawnee, Oklahoma

Two witnesses to execution by lessee

*Irma Ross*

*Dallas, Texas*

*W. L. Holmes*

*Dallas, Tex*

*Frank Davis* [SEAL.]

*W. L. Davis* [SEAL.]

MAGNOLIA PETROLEUM COMPANY,

By *C. R. Brown*  
Vice-President

*W. L. Davis*

MAGNOLIA PETROLEUM COMPANY,

By *C. R. Brown*  
Vice-President

Attest: *W. L. Davis*  
Assistant Secretary.

DEPARTMENT OF THE INTERIOR  
OFFICE OF INDIAN AFFAIRS  
WASHINGTON, D. C. JUN - 5 1940

CANCELLED as to  
the NW NE 15-7N-4E

(Sgd.) J. M. STEWART

For the Commissioner



STATE OF Oklahoma  
COUNTY OF Pottawatomie

before me, A. Notary Public  
in and for said county and State, on this 13th day of March 1923 personally appeared  
Frank Davis and Alice Davis his wife

to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that they  
executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

My commission expires May 19th 1924 C. R. Harriman  
Notary Public

DEPARTMENT OF THE INTERIOR,  
UNITED STATES INDIAN SERVICE,

Shawnee Indian School or Agency,

Shawnee State of Okl. Apr 11 4  
The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be Approved  
(See my report of even date.)

H. H. Haffcoose  
Superintendent of the Shawnee School or Agency.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
WASHINGTON, D. C.,  
APR 13 1923

H. H. Haffcoose  
Superintendent of the Shawnee School or Agency.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
WASHINGTON, D. C.,  
APR 13 1923

Respectfully submitted to the Secretary of the Interior, with recommendation that it be APPROVED

E. A. Haffcoose  
Assistant Commissioner of Indian Affairs

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, D. C.,  
APR 13 1923

W. I. Nelson  
Assistant Secretary of the Interior

Filed for record this 15 day of April 1923

Advance royalty received, \$ 1.00



## United States of America



## THE NATIONAL ARCHIVES

all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Stub of Pottawatomie Land Certificate No. 120—Act of May 23, 1872.

This document is from the records of the Office of Indian Affairs.

Stub of Pottawatomie Land Certificate No. 120—Act of May 23, 1872.

This document is from the records of the Office of Indian Affairs.

In testimony whereof, I, SOLON J. BUCK, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief or Acting Chief of the General Reference Division of the National Archives, in the District of Columbia, this 2d day of March 1945.

*Solon J. Buck*  
Archivist of the United States

By *W. Neil Franklin*  
Chief, General Reference Division



# POTTAWATOMIE LAND CERTIFICATES.

ACT OF CONGRESS, MAY 23, 1872.

No. 120

TO WHOM ISSUED:

Angelina Moma

DESCRIPTION OF LAND:

SEC.

TOWN.

RANGE.

ACRES.

NW 1/4 Sec 11 T. 7. 7 R. 4

Aggregate.

160

DATE OF ISSUE:

Sept. 3

1891.

TO WHOM DELIVERED:

Thomas Moma  
Sacred Heart  
~~U. S. Indian Agent~~

DATE OF DELIVERY:

Sept. 24. 1891.



No.

## DEPARTMENT OF THE INTERIOR,



OFFICE OF INDIAN AFFAIRS,

Washington D C

187

This is to certify That a member  
of the "citizen band" of POTTAWATOMIE Indians, residing upon the "thirty-mile-square tract" Reservation in Indian Territory,  
having signified a desire to locate permanently upon said reservation, and cultivate the soil as a means of subsistence, and to receive an  
allotment of land for that purpose, as provided by an act of Congress approved May 23, 1872 and having resided on said  
reservation continuously for three years, is entitled to acres of land within said reservation, to  
conform to the legal subdivisions of government surveys, and has selected for such purpose the following-described lands, viz:

SUBDIVISION.

SECTION.

TOWNSHIP.

RANGE.

ACRES.

East of the Indian Meridian in Indian Territory, containing an aggregate of acres.

This Certificate is not assignable, and the said  
is expressly prohibited from assigning or attempting to assign the same, and from selling or transferring the said land, or disposing of the  
same or any interest therein, except to the United States, or to persons of Indian blood, residing within the Indian Territory, with  
permission of the President, and under such regulations as the Secretary of the Interior shall prescribe, under penalty of an entire  
forfeiture thereof. And it is further certified that the tracts of land, as above described, are set apart for the exclusive and perpetual use  
and benefit of said allottee and his heirs, and, until otherwise provided by law, the same shall be exempt from levy, taxation, or sale.

, Commissioner.



[fol. 150]

## EXHIBIT "L"

Code of Federal Regulations  
Title 30—Mineral Resources

## Chapter II

## Geological Survey

## Part 221

## Oil and Gas Operating Regulations

[fol. 151] Applicable to Lands of the United States and  
all Restricted Tribal and Allotted  
Indian Lands

(Except Osage Indian Reservation)

7 F. R. 4132 - 4141

United States Department of the Interior

Harold L. Ickes, Secretary

Geological Survey

W. C. Mendenhall, Director

[fol. 152]

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Department of the Interior

Part 221—Oil and Gas Operating Regulations

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Jurisdiction and Functions of Supervisor

## Original

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## [fol. 155] Chapter II—Geological Survey

## Part 221—Oil and Gas Operating Regulations

Section 221.1 Introduction. These oil and gas operating regulations will govern the development and production of deposits of oil, gas, and casing-head or natural gasoline, including propane, butane, and other hydrocarbons, and fluids, and lands containing such deposits owned or controlled by the United States, and under jurisdiction of the Secretary by law or administrative arrangement. These regulations shall be administered under the Director of the Geological Survey, except that as to lands within naval petroleum reserves they shall be administered under such official as the Secretary of the Navy shall designate.\*

221.2 Definitions. The following terms as used in these oil and gas operating regulations shall have the meanings here given:

(a) Secretary.—The Secretary of the Interior, except where lands in naval petroleum reserves are involved, and in that case the Secretary of the Navy.

(b) Director.—The Director of the Geological Survey, Washington, D. C., having administrative direction of the enforcement of these regulations.

(c) Supervisor.—A representative of the Secretary, under administrative direction of the Director, author-

\* Sections 221.1 to 221.67, inclusive, issued under authority contained in the following statutes:

Public Lands: Sec. 32, 41 Stat. 450, sec. 7, 42 Stat. 1450, sec. 6, 46 Stat. 374, 46 Stat. 1523, 47 Stat. 798, sec. 40(a), 48 Stat. 977, 49 Stat. 674, 50 Stat. 842; 30 U. S. C., 189, 236, 306, 184, 226, 209, 229a, 30 U. S. C., Sup., 185, 221, 223, 223a, 226, 236a, 221i.

Naval Petroleum Reserves: 41 Stat. 813, 45 Stat. 148, 52 Stat. 1252; 34 U. S. C., Sup., 524.

Indian Lands: Sec. 3, 26 Stat. 795, sec. 2, 35 Stat. 312, 35 Stat. 783, sec. 2, 39 Stat. 519, sec. 18, 41 Stat. 426, sec. 6, 41 Stat. 753, 42 Stat. 857, 43 Stat. 111, 43 Stat. 244, 44 Stat. 300, sec. 6, 44 Stat. 659, 46 Stat. 385, 52 Stat. 347, 25 U. S. C., 397, 396, 356, 400, 401, 398, 400a, 25 U. S. C., Sup., 396a, b, c, d, e, f.

ized and empowered to supervise and direct oil and gas operations and to perform other duties prescribed in these oil and gas operating regulations, or any subordinate of such representative acting under his direction.

(d) **Officer in charge.**—The supervisor or such other officer as the Secretary may designate to supervise technical operations for the development and production of oil and gas on restricted Indian lands. Over such lands the officer so designated shall exercise the authority and power and perform the duties of supervisor as provided in these regulations.

(e) **Superintendent.**—The superintendent of an Indian agency, or other officer authorized to act in matters of record, law, and collections with respect to oil or gas leases for restricted Indian lands.

(f) **Lease.**—An agreement which in consideration of covenants to be observed, grants to a lessee the exclusive right and privilege of developing and producing oil or gas deposits owned by the lessor subject to these oil and gas operating regulations.

[fol. 156] (g) **Leased lands, leasehold.**—Lands and deposits covered by a lease as defined in paragraph (f), *supra*.

(h) **Producing lease.**—A producing lease is one including land on which there is a producible well, either active or shut in, or land determined by the supervisor to be subject to subsurface drainage.

(i) **Lessor.**—The party to a lease who holds title to the leased lands.

(j) **Lessee.**—The party authorized by a lease, or approved assignment thereof, to develop and produce oil or gas on the leased lands in accordance with these oil and gas operating regulations, including all parties holding such authority by or through him.

(k) **Register.**—A representative of the General Land Office in charge of a District Land Office.

(l) **Operator.**—The individual, partnership, firm, or corporation that has control or management of operations on the leased land or a portion thereof. The



operator may be a lessee, designated agent of the lessee, or holder of rights under an approved operating agreement.

(m) Designated Operator or Agent.—The local representative of the lessee or of the operator; may be the holder of operating rights under an approved operating agreement.

(n) Waste of oil or gas.—Waste of oil or gas, in addition to its ordinary meaning, shall mean the physical waste of oil or gas, and waste, loss, or dissipation of reservoir energy existent in any deposit containing oil or gas and necessary or useful in obtaining the maximum recovery from such deposit.

1. Physical waste of oil or gas shall be deemed to include the loss or destruction of oil or gas after recovery thereof such as to prevent proper utilization and beneficial use thereof, and the loss of oil or gas prior to recovery thereof by isolation or entrapment, by migration, by premature release of natural gas from solution in oil, or in any other manner such as to render impracticable the recovery of such oil or gas.

2. Waste of reservoir energy shall be deemed to include the failure reasonably to maintain such energy by artificial means and also the dissipation of gas energy, hydrostatic energy, or other natural reservoir energy, at any time at a rate or in a manner which would constitute improvident use of the energy available or result in loss thereof without reasonably adequate recovery of oil.

(o) Gas.—Any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

(p) Oil, crude oil.—Any liquid hydrocarbon substance which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas, without resort to manufacturing process.\*

\* For statutory citations, see note to 221.1.

## [fol. 157] Jurisdiction and Functions of Supervisor

221.3 Jurisdiction. Drilling and producing operations, handling and gaging of oil and the measurement of gas or other products, determination of royalty liability, receipt and delivery to those entitled thereto of royalty accruing to the lessor and paid in amount of production, determination of amount and manner of payment of damages assessed under authority of these oil and gas operating regulations for defaults or noncompliance with duties by the lessee and, in general, all operations subject to these regulations are under the jurisdiction of the supervisor for any district as delineated by the Director. As to producing leases of Indian lands, the officer in charge, and as to lands within naval petroleum reserves, the supervisor shall determine rental liability, record rentals, royalties, and other payments, and maintain lease accounts. Upon request, the supervisor or the Director, will advise any person concerning these oil and gas operating regulations, and will furnish technical information and advice relative to oil and gas development and operation on lands subject hereto.\*

221.4 General functions. The supervisor is hereby authorized to require compliance with lease terms, with these oil and gas operating regulations, and all other applicable regulations, and with applicable law to the end that all operations shall conform to the best practice and shall be conducted in such manner as to protect the deposits of the leased lands and result in the maximum ultimate recovery of oil, gas, or other products with minimum waste. Inasmuch as conditions in one area may vary widely from conditions in another area, these oil and gas operating regulations are general, and detailed procedure hereunder in any particular area is subject to the judgment and discretion of the supervisor, and to any areal plan of development that may be adopted pursuant to law. The supervisor may require satisfactory evidence that a lease is in good standing, that the lessee or operator is authorized to conduct operations, and that an acceptable bond has been filed before permitting operation on the leased land.\*

221.5 Supervision of operations. The supervisor shall inspect and supervise operations under these oil and gas

\* For statutory citations, see note to 221.1.



operating regulations; prevent waste, damage to formations or deposits containing oil, gas, or water or to coal measures or other mineral deposits, and injury to life or property; and shall issue instructions necessary, in his judgment, to accomplish these purposes.\*

221.6 Reports and recommendations. The supervisor shall make reports to his superior administrative officer as to the general condition of leased lands, and the manner in which operations are being conducted and departmental orders are being obeyed, and submit from time to time information and recommendations for safeguarding and protecting surface property and underlying mineral-bearing formation.\*

221.7 Reports and notices. The supervisor shall prescribe the manner and form in which records of all operations, reports, and notices shall be made by lessees and operators.\*

221.8 Required samples, tests, and surveys. When deemed necessary or advisable, the supervisor is authorized to require that adequate samples be taken and tests or surveys be made in an acceptable manner without cost to the lessor to determine the identity and character of formations; the presence or waste of oil, gas, water, or reservoir energy; the quantity and quality of oil, gas, or water; the amount and direction of deviation of any well from the vertical; formation, casing, tubing, or other pressures; and whether operations are being conducted with due regard to the interest of the lessor.\*

221.9 Damage to mineral deposits, directional drilling, lease obligations, well abandonment. The supervisor shall require correction, in a manner to be prescribed or approved by him, of any condition which is causing or is likely to cause damage to any formation containing oil, gas, or water or to coal measures or other mineral deposits, or which is dangerous to life or property or wasteful of oil, gas, or water; require substantially vertical drilling when necessary to protect interests in other properties; demand drilling in accordance with the terms of the lease or of these oil and gas operating regulations; and require

\* For statutory citations, see note to 221.1.

plugging and abandonment of any well or wells no longer used or useful in accordance with such plan as may be approved or prescribed by him, and, upon failure to secure compliance with such requirement, perform the work at the expense of the lessee, expending available public funds, and submit such report as may be needed to furnish a basis for appropriate action to obtain reimbursement.\*

221.10 Well potentials and permissible flow. The supervisor is authorized to fix the percentage of the potential capacity of any oil or gas well that may be utilized or the permissible production of any such well when, in his opinion, such action is necessary to protect the interests of the lessor, or to conform with proration rules established for the field; and to specify the time and method for determining the potential capacity of such wells.\*

221.11 Well-spacing and well-casing, technical assistance to lessees. The supervisor shall approve well-spacing and well-casing programs determined to be necessary for the proper development of the leases and assist and advise lessees in the planning and conduct of tests and experiments for the purpose of increasing the efficiency of operations.\*

221.12 Production records; rentals, royalties, and payments; drainage and waste. The supervisor shall compile and maintain records of production and prices and determine royalties accrued, estimate drainage and compute losses to the lessor resulting therefrom, and estimate the amount and value of oil, gas, and other products wasted. The supervisor shall render monthly to the lessee, or his agent, statements showing the amount of oil, gas, casing-head or natural gasoline, propane, butane, or other hydrocarbons produced or sold and the amount or value of production accruing to the lessor as royalty from each lease; the loss by drainage or waste and the compensation due to the lessor as reimbursement; and, except as to any disposal of gas that shall have been determined by the Secretary of the Interior to be sanctioned by the laws of the United States and of the State in which it occurs, the amount and full value, computed at a price of not less than 5 cents per 1,000 cubic feet, of all gas wasted by blowing, release, escape into the air, or otherwise. Also, as to producing leases of

\* For statutory citations, see note to 221.1.



Indian lands and lands within naval petroleum reserves, the supervisor shall determine rental liability, record rental, royalty, and other payments, and maintain lease accounts.\*

221.13 Division orders, run tickets, sales agreements or contracts. The supervisor is authorized to approve, subject to such conditions as he shall prescribe, division orders or temporary purchase agreements granting to transportation agencies or purchasers authority to receive products from leased lands in accordance with Government rules and regulations; sign run tickets or other receipts for royalty oil or gas delivered to a representative of the lessor or to the lessor's account; and approve sales agreements and contracts, subject to any conditions, modification, or revocation that may be prescribed on review thereof by the Secretary.\*

221.14 Suspension of operations and production. On receipt of an application for suspension of operations or production or for relief from any drilling or producing requirement under a lease, the supervisor shall forward such application, with a report and recommendation, to the appropriate official and, pending action thereon, grant such temporary approval as he may deem warranted in the premises, or reject such application, subject to the right of appeal as provided in Sec. 221.66, *infra*.\*

[fol. 159] 221.15 Beginning or resumption of drilling or producing operations. Where drilling or producing operations have been suspended on a lease, the supervisor may approve in writing notice by the lessee of intention to begin or resume such operations; provided, that, whenever it appears from facts adduced by or furnished to him that the interests of the lessor require additional drilling or producing operations, the supervisor may require by notice in writing the beginning or resumption of such operations.\*

221.16 Enforcement. The supervisor shall enforce these oil and gas operating regulations, and his orders issued pursuant thereto by action provided for in Secs. 221.53 and 221.54 of these operating regulations, whenever, in his judgment, such action is necessary or advisable.\*

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\* For statutory citations, see note to 221.1.

221.17 Appeals action. The supervisor shall receive and promptly render his decision on any matter presented for reconsideration pursuant to Sec. 221.66, *infra*, and shall receive and promptly transmit for review all appeals pursuant to said Sec. 221.66, together with his report in the premises.\*

#### Requirements for All Lessees (Including Designated Operators)

221.18 Lease terms, regulations, instructions of supervisor, waste, damage, safety, and bond. The lessee shall comply with the terms of the lease, and of these regulations and any amendments thereof, and with the written instructions of the supervisor, shall take all reasonable precautions to prevent waste, damage to formations or deposits containing oil, gas, or water or to coal measures or other mineral deposits, and injury to life or property, and before drilling or other operations are started, shall have submitted a satisfactory bond.\*

221.19 Designated operator (or agent). In all cases where operations on a lease are not conducted by the record owner, but are to be conducted under authority of an operating agreement, an unapproved assignment, or other arrangement, a "designation of operator" shall be submitted to the supervisor, in a manner and form approved by the supervisor, prior to commencement of operations. If the designation of operator form cannot be obtained from the lessee without undue inconvenience to the operator, the supervisor in his discretion may accept in lieu thereof a valid operating agreement approved by the Secretary. A designation of operator will be accepted as authority of operator or his local representative to fulfill the obligations of the lessee and to sign, as operator, any papers or reports required under these oil and gas operating regulations. It will rest in the discretion of the supervisor to determine how a local representative of the operator empowered to act in whole or in part in his stead shall be identified.

If the designated operator shall at any time be incapacitated for duty or absent from his designated address, the operator or the lessee shall designate in writing a sub-

\* For statutory citations, see note to 221.1.



stitute to serve in his stead, and, in the absence of such operator or of notice of the appointment of a substitute, any employee of the lessee who is on the leased lands or the contractor or other person in charge of operations will be considered the agent of the lessee for the service of orders or notices and service in person or by ordinary mail upon any such employee, contractor, or other person will be deemed service upon the operator and the lessee. All changes of address and any termination of the operator's authority shall be immediately reported, in writing, to the supervisor or his representative. In case of such termination or of controversy between the lessee and the designated operator, the operator, if in possession of the leasehold will be required to protect the interests of the lessor.\*

[fol. 160] - 221.20 Well-Location Restrictions. (a) The lessee shall not drill any well within 200 feet of any of the outer boundaries of the leased lands except where necessary to protect those lands against wells on land the title to which is not held by the lessor, and then only on consent first had in writing from the supervisor; provided, that for good cause shown in any particular case, and where not prohibited by law, a lessee may be relieved of such restrictions on written consent of the supervisor. The lessee shall not drill any well within 200 feet of the boundary of any legal subdivision without first submitting adequate reasons therefor and obtaining consent in writing from the supervisor, such consent to be subject to such conditions as may be prescribed by said official.

(b) Lessees of Indian lands shall not drill any well within 200 feet of any house or barn standing on the leased lands without the lessor's written consent, approved by the officer in charge and the superintendent.\*

221.21 Well-spacing and well-casing program, well operations, required offsets, diligence, compensation in lieu of drilling. When required by the supervisor, the lessee shall submit an acceptable well-spacing and well-casing program for the lease or area. Such program must be approved by the supervisor and may be modified from time to time as conditions warrant, with the consent and approval of the supervisor.

\* For statutory citations, see note to 221.1.

The lessee shall not begin to drill, redrill, repair, deepen, plug back, shoot, or plug and abandon any well, make water shut-off or formation test, alter the casing or liner, stimulate production by vacuum, acid, gas, air, water injection, or any other method, change the method of recovering production, or use any formation or well for gas storage or water disposal without first notifying the supervisor of his plan and intention and receiving written approval prior to commencing the contemplated work.

The lessee shall drill diligently and produce continuously from such wells as are necessary to protect the lessor from loss of royalty by reason of drainage, or, in lieu thereof, with the consent of the supervisor, he must pay a sum estimated to reimburse the lessor for such loss of royalty, the sum to be computed monthly by the supervisor.

The lessee, whenever drilling or producing operations are suspended for 24 hours or more, shall close the mouth of the well with a suitable plug or other fittings acceptable to the supervisor.\*

**221.22** Well designations, property boundaries, markers for abandoned wells. The lessee shall mark each and every derrick or well in a conspicuous place with his name or the name of the operator, the serial number of the lease or the name of the lessor if on Indian land, and the number and location of the well, and shall take all necessary means and precautions to preserve these markings. All abandoned wells shall be marked with a permanent monument, on which shall be shown the number and location of the well, unless this requirement is waived in writing by the supervisor. This monument shall consist of a piece of pipe not less than 4 inches in diameter and not less than 10 feet in length, of which 4 feet shall be above the general ground level, the remainder being embedded in cement. The top of the pipe must be closed with a screw cap, cement plug, or by other approved means.\*

**221.23** Well records and reports, plats and maps, samples, tests, and surveys. The lessee shall keep on the leased lands or at his headquarters in the field, or otherwise conveniently available to the supervisor, accurate and complete records of the drilling, redrilling, deepening, repair.

\* For statutory citations, see note to 221.1.

ing, plugging, or abandoning of all wells and of all other well operations, and of all alterations to casing. These records shall show all the formations penetrated, the content and character of oil, gas, or water in each formation, and the kind, weight, size, and landed depth of casing used in drilling each well on the leased lands, and any other information obtained in the course of well operations.

Within 15 days after the completion of any well and within 15 days after the completion of any further operations on it, the lessee shall transmit to the supervisor copies of these records on forms furnished by the supervisor. (For reports to be made by all lessees or their designated operators, see Secs. 221.57 to 221.65).

The lessee shall take such samples and make such tests and surveys as may be required by the supervisor with a view to determining conditions in the well and obtaining information concerning materials (formations) drilled and shall furnish such characteristic samples of each formation or substance, or reports thereon, as may be requested by the supervisor. The lessee shall gage the production of oil, gas, and water from individual wells continuously or at reasonably frequent intervals to the satisfaction of the supervisor.

The lessee shall also submit in duplicate such other reports and records of operations as may be required and in the manner and form prescribed by the supervisor.

Upon request and in the manner and form prescribed by the supervisor the lessee shall furnish a copy of the daily drilling report, a plat showing the location, designation, and status of all wells on the leased lands, together with such other pertinent information as the supervisor may require.\*

221.24 Precautions Necessary in Areas Where High Pressures Are Likely to Exist. When drilling in "wildcat" territory, or in any field where high pressures are likely to exist, the lessee shall take all necessary precautions for keeping the well under control at all times and shall provide at the time the well is started the proper high-pressure fittings and equipment; under such conditions the conductor string of casing must be cemented throughout its length, unless other procedure is authorized or prescribed by the supervisor, and all strings of casing must be securely anchored.\*

\* For statutory citations, see note to 221.1.



**221.25 Cable Tool Drilling Precautions.** When drilling with cable tools, the lessee shall provide at least one properly prepared slush pit, into which must be deposited mud and cuttings from clay or shale free of sand that will be suitable for the mudding of a well. When necessary or required, the lessee shall provide a second pit for sand pumpings and other materials obtained from the well during the process of drilling that are not suitable for mudding.\*

**221.26 Rotary Tool Drilling Precautions.** When drilling with rotary tools, the lessee shall provide, when required by the supervisor, an auxiliary mud pit or tank of suitable capacity and maintain therein a supply of mud having the proper characteristics for emergency use in case of blowouts or lost circulation.\*

**221.27 Vertical Drilling.** The lessee shall drill substantially vertical wells, material deviation from the vertical being permitted only on written approval of the supervisor and where interests in other properties will not be unfairly affected.\*

**221.28 Water Shut-offs, Formation Tests.** By approved methods, the lessee shall shut off and exclude all water from any oil- or gas-bearing stratum to the satisfaction of the supervisor, and to determine the effectiveness of such operations, the lessee shall make a casing and a water shut-off test before suspending drilling operations or drilling into the oil or gas sand and completing the well.

The lessee shall test for commercial productivity all formations that give evidence of carrying oil or gas, the test to be made to the satisfaction of and in a manner approved [fol. 162] in advance by the supervisor. Unless otherwise specifically approved by the supervisor, formation tests shall be made at the time the formations are penetrated and in the absence of excessive back pressure from a column of water or mud fluid. Records of such tests shall be furnished in duplicate.\*

**221.29 Protection of Upper Productive Strata.** The lessee shall not deepen an oil or gas well for the purpose of producing oil or gas from a lower stratum until all upper productive strata are protected to the satisfaction of the supervisor.\*

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\* For statutory citations, see note to 221.1.

221.30 Open Flows and Control of "Wild" Wells. The lessee shall take reasonable precautions to prevent any oil, gas, or water well from blowing open, or "wild", and shall take immediate steps and exercise due diligence to bring under control any such well or burning oil or gas well.\*

221.31 Emulsion and Dehydration. The lessee shall complete and maintain his wells in such mechanical condition and operate them in such manner as to prevent, as far as possible, the formation of emulsion, or so-called B. S., and the infiltration of water. If the formation of emulsion, or B. S., or the infiltration of water, cannot be prevented or if all or any part of the product is unmarketable by reason thereof or on account of any impurity or foreign substance, the lessee shall put into marketable condition, if commercially feasible, all products produced from the leased land and pay royalty thereon without recourse to the lessor for deductions on account of costs of treatment or of costs of shipping. To avoid excessive losses from evaporation, oil shall not be heated to temperatures above the minimum required to put the oil into marketable condition. If excessive temperatures are required to break down an emulsion, then other means of dehydration must be utilized. Under such circumstances the supervisor must be consulted, and his approval obtained.\*

221.32 Pollution and Surface Damage. The lessee shall not pollute streams or damage the surface or pollute the underground water of the leased or other land. If useless liquid products of wells cannot be treated or destroyed or if the volume of such products is too great for disposal by usual methods without damage, the supervisor must be consulted, and the useless liquids disposed of by some method approved by him.\*

221.33 Gaging and Storing Oil. All production run from leased lands shall be gaged or measured according to methods approved by the supervisor. The lessee shall provide tanks located on the leasehold, unless otherwise approved by the supervisor, suitable for containing and measuring accurately all crude oil produced from the wells and shall furnish to the supervisor at least two acceptable positive copies

\* For statutory citations, see note to 221.1.

of 100 percent-capacity tank tables. Meters for measuring oil must be first approved by the supervisor, and tests of their accuracy shall be made when directed by that official. The lessee shall not, except during an emergency and except by special permission of the supervisor, confirmed in writing, permit oil to be stored or retained in earthen reservoirs or in any other receptacle in which there may be undue waste of oil.\*

**221.34 Well Abandonment.** The lessee shall promptly plug and abandon or condition as a water well any well on the leased land that is not used or useful for the purposes of the lease, but no productive well shall be abandoned until its lack of capacity for further profitable production of oil or gas has been demonstrated to the satisfaction of the supervisor. Before abandoning a well the lessee shall submit to the supervisor a statement of reasons for abandonment and his detailed plans for carrying on the necessary work, together with duplicate copies of the log, if it has not already been submitted. A well may be abandoned only after receipt of written approval by the supervisor, in which the manner and method of abandonment shall be approved or prescribed. Equipment shall be removed and premises at the well-site shall be properly conditioned immediately after plugging operations are completed on any well.

[fol. 163] In case the lessee of lands of the United States strikes water while drilling, instead of oil or gas, and the water is of sufficient quantity and suitable quality to be valuable and usable at a reasonable cost, the Secretary may take over the well as provided in section 40 of the Mineral Leasing Act approved June 16, 1934, 48 Stat. 977, 30 U. S. C. 229a. If a satisfactory agreement is reached, the lessee may condition the well for a water well in lieu of plugging and abandonment.

Drilling equipment shall not be removed from any suspended drilling well without first securing the written consent of the supervisor.\*

**221.35 Waste Prevention, Beneficial Use.** The lessee is obligated to prevent the waste of oil or gas and to avoid physical waste of gas the lessee shall consume it beneficially or market it or return it to the productive formation. If

\* For statutory citations, see note to 221.1.



waste of gas occurs the lessee shall pay the lessor the full value of all gas wasted by blowing, release, escape, or otherwise, at a price not less than 5 cents for each 1,000 cubic feet, unless, on application by the lessee, such waste of gas under the particular circumstances involved shall be determined by the Secretary to be sanctioned by the laws of the United States and of the State in which it occurs. The production of oil and gas shall be restricted to such amount as can be put to beneficial use with adequate realization of values, and in order to avoid excessive production of either oil or gas, when required by the Secretary, shall be limited by the market demand for gas or by the market demand for oil.\*

221.36 Accidents and Fires. The lessee shall take all reasonable precautions to prevent accidents and fires, shall notify the supervisor within 24 hours of all accidents or fires on the leased land, and shall submit a full report thereon within 15 days.\*

221.37 Workmanlike Operations. The lessee shall carry on all operations and maintain the property at all times in a safe and workmanlike manner, having due regard for the preservation and the conservation of the property and for the health and safety of employees. The lessee shall take reasonable steps to prevent and shall remove accumulations of oil or other materials deemed to be fire hazards from the vicinity of well locations and lease tanks, and shall remove from the property or store in orderly manner all scrap or other materials not in use.\*

221.38 Sales Contracts, Division Orders. The lessee shall file with the supervisor triplicate (quadruplicate for production of restricted Indian lands or naval petroleum reserves) executed copies of all contracts for the disposition of all products of the leased land except that portion used for purposes of production on the leased land or unavoidably lost, and he shall not sell or otherwise dispose of said products except in accordance with the sales contract, division order, or other arrangement first approved, as provided in Sec. 221.13, *supra*.\*

221.39 Relief from Operating, Royalty, and Rental Requirements. Applications for any modification authorized

\* For statutory citations, see note to 221.1.

by law of the operating requirements of a lease for lands of the United States shall be filed in triplicate (quintuplicate for applications involving leases for lands within the naval petroleum reserves) with the supervisor, and shall include a full statement of the circumstances that render such modification necessary or proper. Applications for any modification authorized by law of the royalty or rental requirements of a lease for lands of the United States shall be filed in duplicate in the United States land office of the district in which the land is situated, and report thereon will be made by the supervisor.\*

221.40 Royalty and Rental Payments. When due in money, the lessee shall tender all payments of rental and royalty by check or draft on a solvent bank, or by money order drawn to the order of the appropriate receiving office, [fol. 164] cer, in accordance with statements rendered by the supervisor pursuant to Sec. 221.12, *supra*, or in the case of public-land leases in accordance with instructions of the General Land Office.

If the lessor elects to take royalty in oil or gas, unless otherwise agreed upon, such royalty shall be delivered on the leasehold, by the lessee to the order of and without cost to the lessor, as instructed by the supervisor. Upon the lessor's request, storage for royalty oil for 30 days after the end of the calendar month in which the royalty accrues, shall be furnished free of charge. Storage shall be provided on the leased lands or at a place mutually agreed upon by the supervisor and the lessee.\*

221.41 Surface Rights on Indian Lands. Lessees of Indian land shall have only such surface rights as are specifically granted in the lease, but additional rights may be exercised under written agreement with the owner, such agreement to be subject to the prior approval of the superintendent of the Indian agency having jurisdiction. On demand of the supervisor, pipe lines on Indian land shall be buried below plow depth.\*

221.42 Costs or Damages.<sup>1</sup> The lessee shall pay all costs

\* For statutory citations, see note to 221.1.

<sup>1</sup> Cross reference: For other liabilities of the lessee in case of default see also Secs. 221.53 to 221.56, *infra*.

or damages assessed under the provisions of these oil and gas operating regulations.\*

### Measurement of Production and Computation of Royalties

221.43 Measurement of Oil. The volume of production shall be computed in terms of barrels of clean oil of 42 standard United States gallons of 231 cubic inches each, on the basis of meter measurements (meter must be approved by supervisor), or tank measurements of oil-level differences, made and recorded to the nearest quarter inch of 100-percent-capacity tables, or with such greater accuracy as shall be required by the supervisor, and subject to the following corrections.

(a) Correction for Impurities.—The percentage of impurities (water, sand, and other foreign substances not constituting a natural component part of the oil) shall be determined to the satisfaction of the supervisor, and the observed gross volume of oil shall be corrected to exclude the entire volume of such impurities.

(b) Temperature Correction.—The observed volume of oil corrected for impurities shall be further corrected to the standard volume at 60° F. in accordance with table 2 of Circular C-410 of the National Bureau of Standards (March 4, 1936) or any revisions thereof and any supplements thereto, or any close approximation thereof approved by the supervisor.

(c) Gravity Determination.—The gravity of the oil at 60° F. shall be determined in accordance with table 1 of Circular C-410 of the National Bureau of Standards (March 4, 1936) or any revisions thereof and any supplements thereto.

(d) Lease Production, Pipe-line Runs.—For the convenience of the lessor and lessee, monthly statements of production and royalty shall be based in general on production recorded in pipe-line runs or other shipments. When shipments are infrequent or do not approximate actual production, the supervisor may require statements of production and royalty to be made on such [fol. 165] other basis as he may prescribe, gains, or

\* For statutory citations, see note to 221.1.



losses in volume of storage being taken into account when appropriate. Evidence of all shipments of oil shall be furnished by pipe-line or other run tickets signed by representatives of the lessee and of the purchaser who have witnessed the measurements reported and the determinations of gravity, temperature, and the percentage of impurities contained in the oil. Signed run tickets shall be filed with the supervisor within 5 days after the oil has been run.\*

**221.44 Measurement of Gas.** Gas of all kinds (except gas used for purposes of production on the leasehold or unavoidably lost) is subject to royalty, and all gas shall be measured by meter (preferably of the orifice-meter type) unless otherwise agreed to by the supervisor. All gas meters must be approved by the supervisor and installed at the expense of the lessee at such places as may be agreed to by the supervisor. For computing the volume of all gas produced, sold, or subject to royalty, the standard of pressure shall be 10 ounces above an atmospheric pressure of 14.4 pounds to the square inch, regardless of the atmospheric pressure at the point of measurement, and the standard of temperature shall be 60° F. All measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was actually measured, unless otherwise authorized in writing by the supervisor.\*

**221.45 Determination of Gasoline Content of Natural Gas.** Tests to determine the gasoline content of gas delivered to plants manufacturing gasoline are required to check plant efficiency and to obtain an equitable basis for allocating the gasoline output of any plant to the several sources from which the gas treated is derived. The gasoline content of the gas delivered to each gasoline plant treating gas from leased lands shall be determined periodically by field tests, as required by the supervisor, to be made at the place and by the methods approved by him and under his supervision.\*

**221.46 Quantity Basis for Computing Royalties on Natural Gasoline, Butane, Propane, and Other Liquid Hydrocarbon Substances Extracted from Gas.** The primary quan-

\* For statutory citations, see note to 221.1.

tity basis for computing monthly royalties on casing-head or natural gasoline, butane, propane, or other liquid hydrocarbon substances extracted from gas is the monthly net output of the plant at which the substances are manufactured, "net output" being defined as the quantity of each such substance that the plant produces for sale.

(a) If the net output of a plant is derived from the gas obtained from only one leasehold, the quantity of gasoline or other liquid hydrocarbon substances on which computations of royalty for the lease are based is the net output of the plant.

(b) If the net gasoline output of a plant is derived from gas obtained from several leaseholds producing gas of uniform gasoline content, the proportion of net output of gasoline allocable to each lease as a basis for computing royalty will be determined by dividing the amount of gas delivered to the plant from each leasehold by the total amount of gas delivered to the plant from all leaseholds.

(c) If the net gasoline output of a plant is derived from gas obtained from several leaseholds producing gas of diverse gasoline content, the proportion of net output of gasoline allocable to each leasehold as a basis for computing royalty will be determined by multiplying the amount of gas delivered to the plant from the leasehold by the gasoline content of the gas and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leaseholds from which gas is delivered to the plant.

[fol.166] (d) If the net output of butane, propane, or other liquid hydrocarbon substances of a plant is derived from gas obtained from several leaseholds, the proportion of net output of such substances allocable to each leasehold as a basis for computing royalty will be determined by substituting the butane, propane, or other liquid hydrocarbon content for the gasoline content and following the method outlined in subsection 221.46 (b) or (c), *supra*, whichever is applicable; provided that when in the judgment of the supervisor it is impracticable to test gas to determine the content of

butane, propane, or other liquid hydrocarbon substances, the gasoline content will be used in determining the proportion of the net output of such substances allocable to each leasehold.

(e) The supervisor is authorized, whenever in his judgment neither method prescribed in subsection 221.46 (b) and (c) is practicable, to estimate the production of natural gasoline, butane, propane, or other liquid hydrocarbon substances from any leasehold from (1) the quantity of gas produced from the leasehold and transmitted to the extraction plant, (2) the gasoline, butane, propane, or other liquid hydrocarbon content of such gas as determined by test, and (3) a factor based on plant efficiency or recovery and so determined as to insure full protection of the royalty interest of the lessor.\*

221.47 Value Basis for Computing Royalties. The value of production, for the purpose of computing royalty shall be the estimated reasonable value of the product as determined by the supervisor, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee; to posted prices and to other relevant matters. Under no circumstances shall the value of production of any of said substances for the purposes of computing royalty be deemed to be less than the gross proceeds accruing to the lessee from the sale thereof or less than the value computed on such reasonable unit value as shall have been determined by the Secretary. In the absence of good reason to the contrary, value computed on the basis of the highest price per barrel, thousand cubic feet, or gallon paid or offered at the time of production in a fair and open market for the major portion of like-quality oil, gas, or other products produced and sold from the field or area where the leased lands are situated will be considered to be a reasonable value.\*

221.48 Royalty Rates on Oil, Flat-rate Leases. The royalty on crude oil shall be the percentage (established by the terms of the lease) of the value or amount of the crude oil produced from the leased lands.\*

\* For statutory citations, see note to 221.1.



**221.49 Royalty Rates on Oil, Sliding- and Step-scale Leases (Public Land Only).** Sliding- and step-scale royalties are based on the average daily production per well. The supervisor shall specify which wells on a leasehold are commercially productive, including in that category all wells, whether produced or not, for which the annual value of permissible production would be greater than the estimated reasonable annual lifting cost, but only wells which yield a commercial volume of production during at least part of the month shall be considered in ascertaining the average daily production per well. The average daily production per well for a lease is computed on the basis of a 28-, 29-, 30-, or 31-day month (as the case may be), the number of wells on the leasehold counted as producing and the gross production from the leasehold. (Tables for computing royalty on the sliding-scale and on the step-scale basis may be obtained upon application to the supervisor). The supervisor will determine which commercially productive wells shall be considered each month as producing wells for the purpose of computing royalty in accordance with the following rules, and in his discretion may count as producing any commercially productive well shut-in for conservation purposes:

[fol. 167] (a) For a previously producing leasehold, count as producing for every day of the month each previously producing well that produced 15 days or more during the month, and disregard wells that produced less than 15 days during the month.

(b) Wells approved by the supervisor as input wells shall be counted as producing wells for the entire month if so used 15 days or more during the month and shall be disregarded if so used less than 15 days during the month.

(c) When the initial production of a leasehold is made during the calendar month, compute royalty on the basis of producing well-days.

(d) When a new well is completed for production on a previously producing leasehold and produces for 10 days or more during the calendar month in which it is brought in, count such new wells as producing every day of the month, in arriving at the number of producing well-days. Do not count any new well that produces for less than 10 days during the calendar month.

(e) Consider "head wells" that make their best production by intermittent pumping or flowing as producing every day of the month, provided they are regularly operated in this manner, with approval of the supervisor.

(f) For previously producing leaseholds on which no wells produced for 15 days or more, compute royalty on a basis of actual producing well-days.

(g) For previously producing leaseholds on which no wells were producing during the calendar month but from which oil was shipped, compute royalty at the same royalty percentage as that of the last preceding calendar month in which production and shipments were normal.

(h) Rules for special cases not subject to definition, such as those arising from averaging the production from two distinct sands or horizons when the production of one sand or horizon is relatively insignificant compared to that of the other, shall be made by the supervisor as need arises.

(i) In the following summary of operations on a typical leasehold for the month of June, the wells considered for the purpose of computing royalty on the entire production of the property for the month are indicated.

Well No.	Record	Count (marked X)
1	Produced full time for 30 days	X
2	Produced for 26 days; down 4 days for repairs	X
3	Produced for 28 days; down June 5, 12 hours, rods; June 14, 6 hours, engine down; June 25, 24 hours; June 26, 24 hours pulling rods and tubing	X
4	Produced for 12 days; down June 13 to 30	X
5	Produced for 8 hours every other day (head well)	X
6	Idle producer (not operated)	
7	New well, completed June 17; produced for 14 days	X
8	New well, completed June 22; produced for 9 days	

In this example there are eight wells on the leasehold, but wells 4, 6, and 8 are not counted in computing royalties.

Wells 1, 2, 3, 5, and 7 are counted as producing for 30 days. [fol. 168] The average production per well per day is determined by dividing the total production of the leasehold for the month (including the oil produced by wells 4 and 8) by 5, the number of wells counted as producing, and dividing the quotient thus obtained by the number of days in the month.\*

221.50 Royalty on Gas. The royalty on gas shall be the percentage established by the terms of the lease of the value or amount of the gas produced.

(a) Royalty accrues on dry gas, whether produced as such or as residue gas after the extraction of gasoline.

(b) If the lessee derives revenue on gas from two or more products, a royalty normally will be collected on all such products.

(c) For the purpose of computing royalty the value of wet gas shall be either the gross proceeds accruing to the lessee from the sale thereof or the aggregate value determined by the Secretary of all commodities, including residue gas, obtained therefrom, whichever is greater.\*

221.51 Royalty on casing-head or natural gasoline, butane, propane, or other liquid hydrocarbon substances extracted from gas. A royalty as provided in the lease shall be paid on the value of one-third (or the lessee's portion if greater than one-third) of all casing-head or natural gasoline, butane, propane, or other liquid hydrocarbon substances extracted from the gas produced from the leasehold. The value of the remainder is an allowance for the cost of manufacture, and no royalty thereon is required. The value shall be so determined that the minimum royalty accruing to the lessor shall be the percentage established by the lease of the amount or value of all extracted hydrocarbon substances accruing to the lessee under an arrangement, by contract or otherwise, for extraction and sale that has been approved by the supervisor:

(a) When a minimum price established by the Secretary is used in determining the value of natural gaso-

\* For statutory citations, see note to 221.1.



line accruing to the lessee, the volume of such gasoline may be corrected when deemed necessary by the supervisor to such standard and by such method as may be approved by the supervisor, in order that volumetric differences between natural gasolines of various specifications may be equitably adjusted.

(b) The present policy is to allow the use of a reasonable amount of dry gas for operation of the gasoline plant, the amount allowed being determined or approved by the supervisor, but no allowance shall be made for boosting residue gas, or other expenses incidental to marketing.\*

221.52 Royalty on drip gasoline or other natural condensate. The royalty on all drip gasoline, or other natural condensate recovered from gas produced from the leased lands without resort to manufacturing process shall be the same percentage as provided in the lease for other oil, except that such substance, if processed in a casing-head gasoline plant shall be treated for royalty purposes as though it were gasoline.\*

#### Procedure in Case of Default by Lessee

221.53 Shutting down operations, lease cancellations. The supervisor has authority to shut down any operation and place under seal any property or equipment for failure to comply with these oil and gas operating regulations or orders issued hereunder, to enter upon any leasehold and perform any operation that the lessee fails to perform when [fol. 169] ordered so to do in writing, and to recommend cancellation of the lease and forfeiture under the bond for noncompliance with the applicable law, lease terms and regulations.\*

221.54 Liquidated damages. Administrative costs arising out of certain defaults or violations of orders requiring the performance of certain duties by lessees, as set forth in these oil and gas operating regulations, constitute loss or damage to the United States the amount of which is difficult or impracticable of ascertainment. Therefore, the following amounts shall be deemed to cover such loss or damage and shall be payable upon receipt of notice from the

\* For statutory citations, see note to 221.1.

oil and gas supervisor of such loss or damage; provided, that as to subsection (f) hereof the specified loss or damage shall be applicable to each week or fraction thereof during which the violation continues and as to subsection (h) hereof the specified loss or damage shall be applicable to each day or fraction thereof during which the violation continues.

(a) For failure to perform any operation ordered in writing by the supervisor, if said operation is thereafter performed by or through the supervisor, the actual cost of performance thereof and an additional 25 percent to compensate the Government for administrative costs.

(b) For failure to maintain inviolate any seal placed upon any property or equipment by the supervisor, \$50 for each violation.

(c) For failure to file notice of intention and to obtain approval before starting to drill, or for failure to file notice and obtain approval before making any changes in the originally approved notice of intention, \$25 for each violation.

(d) For failure to file notice and to obtain approval before repairing, redrilling, deepening, plugging-back, plugging, or abandoning any well, in pulling or altering casing, stimulating production by vacuum, acid, or shot, or gas, air, or water injection, or using any well or formation for gas storage or water disposal, \$25 for each violation.

(e) For failure to mark wells or derricks, \$10 for each violation.

(f) For failure to install required high-pressure fittings and equipment, to cement conductor, string, or to anchor properly all strings of casing, \$50 for each violation.

(g) For failure to construct and maintain in proper condition slush or mud pits, \$10 for each violation.

(h) For failure to comply with Sec. 221.32, *supra*, \$25 for each violation.

(i) For failure to file sales contracts or division orders as required by lease terms, \$25 for each violation.

and for failure to submit pipe-line run tickets, or other proper evidence of disposal as required by these regulations, \$10 for each violation.

(j) For failure to file the following reports within the time specified in these oil and gas operating regulations, or within such other time designated in writing by the supervisor, \$10 for each violation:

1. Log of well, subsequent report of drilling, redrilling, deepening, plugging-back, plugging and abandonment [fol. 170] ment, making water shut-off or formation test, stimulating production by acid or shot.

2. Lessee's Monthly Report of Operations. Daily Report of Gas-Producing Wells, when required. Lessee's Statement of Oil and Gas Runs and Royalties.

3. Special forms or reports as required by the supervisor.\*

221.55 Payment of Damages. Payment or request for payment for any of the damages assessed for administrative costs under these regulations shall not relieve the lessee from compliance with the provisions of these regulations, or for liability for waste or any other damage. A waiver of any particular cause for the payment of damages shall not be construed as precluding the assessment of damages for any other cause herein specified or for the same cause occurring at any other time.

Damages shall be paid in the manner and as directed by the supervisor.\*

221.56 Damages to Indian Property. Damage to lands, crops, buildings, and other improvements on Indian land shall be assessed by the superintendent, and payments for such damages shall be made to the superintendent.\*

### Reports to Be Made By All Lessees. (Including Operators)

221.57. General Requirements. Information required to be submitted in accordance with these oil and gas operating regulations shall be furnished in the manner and form prescribed in these regulations or as directed by the supervisor. Prescribed standard forms in general use are described in

\* For statutory citations, see note to 221.1.




Secs. 221.58-221.64, *infra*. Copies of such forms can be obtained from the supervisor and must be filled out completely and filed punctually with that official. Failure of the lessee to submit the information and reports required herein constitutes noncompliance with the terms of these oil and gas operating regulations and is cause for the assessment of specific damages as prescribed by these regulations, and the cancellation of the lease.\*

221.58 Sundry Notices and Reports on Wells (Form 9-331A Public; Form 9-331B Indian). Forms 9-331A and 9-331B cover all notices of intention and all subsequent reports pertaining to individual wells except those for which special blanks are provided. The forms may be used for any of the purposes listed thereon, or a special heading may be inserted in the blank to adapt it for use for similar purposes. Any written notice of intention to do work or to change plans previously approved must be *filed in triplicate*, unless otherwise directed, and must reach the supervisor and receive his approval before the work is begun. The lessee is responsible for receipt of the notice by the supervisor in ample time for proper consideration and action. If, in case of emergency, any notice is *given orally* or by wire, and approval is obtained, the transaction shall be confirmed in writing as a matter of record. The following paragraphs illustrate some of the uses to which forms 9-331A and 9-331B may be put and indicate the requirements with respect to each use.

(a) Notice of Intention to Drill.—The notice of intention to drill a well must be filed with the supervisor and approval received before the work is begun. This notice must give the location, in feet, and direction from the nearest lines of established public survey; the altitude of the ground and derrick floor above sea level and how obtained; and the geologic name of the surface formation. Under the heading "Details of Works," the proposed drilling and casing plan should be outlined in detail. Essential information includes type of tools, proposed depth to which the well will [fol. 171] be drilled, estimated depths to the top of important markers, estimated depths at which water, oil, gas, and mineral beds are expected, the proposed

\* For statutory citations, see note to 221.1.



casing record, including the size and weight of casing, the depth at which each string is to be set, and the amount of cement and mud to be used. Information also shall be given relative to the drilling plan, such as making drill-stem tests, drilling in with oil, using reversed circulation, perforating opposite pays, using special types of mud in rotary drilling, coring at specified depths, and using electric logging together with any other information which may be required by the supervisor.

(b) Notice of Intention to Change Plans.—Where unexpected conditions necessitate any change in the plans of proposed work already approved, complete details of the changes must be submitted to the supervisor and approval thereof obtained before the work is undertaken.

(c) Notice of Date for Casing and Water Shut-off Test.—The protection and segregation of oil, gas, or water-bearing formations is an important item of conservation, and the supervisor will witness all casing and water shut-off tests. Notice must be filed with the supervisor in advance of the date on which the lessee expects to make such test. Later by agreement the exact time shall be fixed. The casing test and the test of water shut-off must be approved before further drilling can proceed. In the event of failure, casing must be repaired or replaced or recemented, whichever the conditions may require.

(d) Subsequent Report of Casing and Water-Shut-off Test.—Within 15 days after making a casing or water shut-off test, the results of the test must be reported. The report must give complete and accurate details, amount of mud and cement used, lapse of time between running and cementing the casing and making the test, method of testing, and results.

(e) Notice of Intention to Redrill, Repair, or Condition Well.—Before repairing, deepening, or conditioning a well, a detailed written statement of the plan of work must be filed with the supervisor and approval obtained before the work is started. In work that affects only rods, pumps, or tubing, or other routine work, such as cleaning out to previous total depth, no

report is necessary unless specifically required by the supervisor.

(f) Subsequent Report of Redrilling, Repairing, or Conditioning.—Within 15 days after completion of the repair work a detailed report of work done and the results obtained should be filed. Such report shall show the amount of production of oil, gas, and water, both before and after the work is done, and shall also include a complete statement of the work accomplished and methods employed, including all dates.

(g) Notice of Intention to Use Explosive or Chemicals.—Before using explosive or chemicals (shooting or acidizing) in any well, whether for increasing production or in drilling, repair, or abandonment, notice of intention shall be filed and approval obtained before the work is done. When such notice of intention forms a part of a notice of intention to redrill, repair, or abandon a well, the supervisor may accept such notice in lieu of a separate notice of intention to use explosive or chemicals. The notice of intention to use explosive or chemicals must be accompanied by the complete log of the well to date, provided the complete log has not previously been filed, and must state the object of the work to be done, the amount and nature of the material to be used, its exact location and distribution in the well by depths, the method of localizing its effects, and the name of the company that is to do the work. The notice shall also contain an accurate statement of the dates and daily production of oil, gas, and water from the well for each of the last preceding 10 producing days.

[fol. 172] (h) Subsequent Report of Use of Explosive or Chemicals.—After using explosive or chemicals in any well a subsequent report must be filed with the supervisor. This report shall be filed separately within 15 days after the work is done, unless such report is included in the log as a part of a report of other subsequent work done or as a part of an abandonment report any one of which shall have been filed within that period. The subsequent report of use of explosive or chemicals shall include a statement of the amount and the nature of the material used, its exact location



and distribution in the well by depths, and the method used to localize its effects. The report shall also contain an accurate statement of the dates and daily production of oil, gas, and water for each of the last 10 producing days preceding the use of explosive or chemicals and a similar statement of production after the work is done. In addition, this report must include other pertinent information, such as the depth to which the well was cleaned out, the time spent in bailing and cleaning out, and any injuries to the casing or well.

(i) Notice of Intention to Pull, Perforate, or Otherwise Alter Casing.—If any casing is to be pulled, perforated, or otherwise altered, notice of intention must be filed and approved before the work is started. Such notice must give full details of the contemplated work, stating fully what changes are intended and what results are anticipated. A notice of intention to perforate the casing shall state the conditions of the well that make such work desirable; whether it is to be ripped or shot, the depth, number, and size of shots, or if ripped, the depths of the rips proposed; the production of oil, gas, and water; and, if a log of the well has not already been filed, the notice should be accompanied by a duplicate copy of the log showing all casing seats as well as all water strata and all oil and gas shows.

(j) Subsequent Report of Pulling, Perforating, or Otherwise Altering Casing.—If any casing has been pulled, perforated, or otherwise altered, the results of the work should be reported within 15 days after the completion of such work, stating exactly what was done and the results obtained, including any change in production. The report of perforating casing also should include the number, depth, and size of shots, the date shot, and who did the shooting. If ripped, the depths and number of rips should be stated. The production of oil, gas, and water obtained by the work should be shown.

(k) Notice of Intention to Abandon Well.—Before beginning abandonment work on any well, whether drilling well, oil or gas well, water well, or so-called dry hole, notice of intention to abandon shall be filed

with the supervisor and approval obtained before the work is started. The notice must show the reason for abandonment and must be accompanied by a complete log, in duplicate, of the well to date, provided the complete log has not been filed previously, and must give a detailed statement of the proposed work, including such information as kind, location, and length of plugs (by depths), and plans for mudding, cementing, shooting, testing, and removing casing, as well as any other pertinent information.

(1) **Subsequent Report of Abandonment.**—After a well is abandoned or plugged a subsequent record of work done must be filed with the supervisor. This report shall be filed separately within 15 days after the work is done. The report shall give a detailed account of the manner in which the abandonment or plugging work was carried out, including the nature and quantities of materials used in plugging and the location and extent (by depths) of the plugs of different materials; records of any tests or measurements made and of the amount, size, and location (by depths) of casing left in the well; and a detailed statement of the volume of mud fluid used, and the pressure attained in mudding. If an attempt was made to part any casing, a complete [fol. 173] report of the methods used and results obtained must be included.\*

**221.59 Log and History of Well (Form 9-330).** The lessee shall furnish in duplicate, on form 9-330, to the supervisor, not later than 15 days after the completion of each well, a complete and accurate log and history, in chronologic order, of all operations conducted on the well. If a log is compiled for geologic information from cores or formation samples, duplicate copies of such log shall be filed in addition to the regular log. Duplicate copies of all electric logs, temperature surveys, or direction surveys shall be furnished. The lessee shall require the drillers, whether using company labor or contract labor, to record accurately the depth, character, fluid content, and fluid levels, where possible, of each formation as it is penetrated, together with all other pertinent information obtained in

\* For statutory citations, see note to 221.1.

drilling the well. The practice of compiling well logs from memory, after the work has been completed, will not be permitted.\*

221.60 Monthly Report of Operations (Form 9-329 Public; Form 9-329A Indian). A separate report of operations for each lease must be made on form 9-329 for public land and on form 9-329A for Indian land, for each calendar month, beginning with the month in which drilling operations are initiated, and must be filed in duplicate with the supervisor on or before the 6th day of the succeeding month, unless an extension of time for the filing of such report is granted by the supervisor. The report on this form shall disclose accurately all operations conducted on each well during each month, the status of operations on the last day of the month, and a general summary of the status of operations on the leased lands, and the report must be submitted each month until the lease is terminated or until omission of the report is authorized by the supervisor.

It is particularly necessary that the report shall show for each calendar month:

(a) The lease be identified by inserting the name of the United States land office and the serial number, or in the case of Indian land the lease number and lessor's name, in the space provided in the upper right corner;

(b) Each well be listed separately by number, its location be given by 40-acre subdivision ( $\frac{1}{4}$   $\frac{1}{4}$  sec. or lot), section number, township, range, and meridian;

(c) The number of days each well produced, whether oil or gas, and the number of days each input well was in operation be stated;

(d) The quantity of oil, gas, and water produced, the total amount of gasoline, and other lease products recovered, and other required information. When oil and gas, or oil, gas, and gasoline, or other hydrocarbons are concurrently produced from the same lease, separate reports on this form should be submitted for oil and for gas and gasoline, unless otherwise authorized or directed by the supervisor.

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\* For statutory citations, see note to 221.1.



(e) The depth of each active or suspended well, and the name, character, and depth of each formation drilled during the month, the date each such depth was reached, the date and reason for every shut-down, the names and depths of important formation changes and contents of formations, the amount and size of any casing run since last report, the dates and results of any tests such as production, water shut-off, or gasoline content, and any other noteworthy information on operations not specifically provided for in the form.

(f) The footnote must be completely filled out as required by the supervisor. If no runs or sales were made during the calendar month, the report must so state.\*

[fol. 174] 221.61 Daily Report of Gas-Producing Wells (Form 9-352). Unless otherwise directed by the supervisor, the readings of all meters showing production of natural gas from leased lands shall be submitted daily on form 9-352, together with the meter charts. After a check has been had the meter charts will be returned.\*

221.62 Statement of Oil and Gas Runs and Royalties (Form 9-361 Public; Form 9-361A Indian). When directed by the supervisor, a monthly report shall be made by the lessee in duplicate, on form 9-361 or 9-361A, showing each run of oil, all sales of gas, gasoline, other lease products, and the royalty accruing therefrom to the lessor. When use of this form is required it must be completely filled out and sworn to.\*

221.63 Royalty and Rental Remittance (Form 9-614A Indian). Form 9-614A, completely filled out and signed, shall be submitted to the supervisor in triplicate and shall accompany each remittance covering payments of royalty or rental on Indian lands.\*

221.64 Royalty and Rental Remittance (Form 11ND Naval Petroleum Reserves). Form 11ND, completely filled out and signed, must accompany each remittance covering payments of royalty or rental on naval petroleum reserves. The remittance and the original form shall be sent direct to the Property Accounting Officer, United States Navy,

\* For statutory citations, see note to 221.1.

Bureau of Supplies and Accounts, Navy Department, Washington, D. C., and the duplicate and triplicate copies of the form shall be sent to the oil and gas supervisor.\*

221.65 Special Forms or Reports. When special forms or reports other than those referred to in these regulations may be necessary, instructions for the filing of such forms or reports will be given by the supervisor.\*

221.66 Appeals. An appeal from any order issued under authority of these regulations may be filed as hereinafter set forth in this section. Compliance with any such order shall not be suspended by reason of an appeal having been taken unless such suspension is authorized in writing by the Director, or the Secretary (dependent upon the officer with whom the appeal is pending), and then only upon a determination that such suspension will not be detrimental to the lessor or upon the submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

(a) An appeal to the Director may be taken from any order of the supervisor by filing such appeal with the latter officer within 20 days after service of the order. The appeal shall incorporate or be accompanied by such written showing and argument on the facts and law as the appellant may deem adequate to justify reversal or modification of the order. All statements of facts must be made under oath.

(b) The supervisor shall transmit the appeal and accompanying papers to the Director with a full report and recommendations in the premises and that officer shall review the record and render such a decision in the case as he deems proper.

(c) An appeal from any decision of the Director may be taken to the Secretary within 30 days after service of the Director's decision. The appeal shall be accompanied by such written showing and argument on the facts and law as appellant may deem adequate to justify reversal or modification of the decision. Any statement of facts not submitted to the Director must be made under oath.

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\* For statutory citations, see note to 221.1.

(d) Oral argument in any case pending before the supervisor, the Director, or the Secretary will be allowed on motion in the discretion of such officer and at a time to be fixed by him.

[fol. 175] (e) The procedure for appeals involving leases for public land shall be followed for leases on the naval petroleum reserves and Indian land except that, with regard to the naval petroleum reserves, the Director of Naval Petroleum Reserves, and with regard to Indian land, the Commissioner of Indian Affairs will exercise the functions vested in the Director.\*

221.67 Effective Date of These Oil and Gas Operating Regulations, Repeal of Prior Regulations. These oil and gas operating regulations shall become effective on the first day of June, 1942, and shall supersede the oil and gas operating regulations of November 1, 1936, as amended, 1 F. R. 1996-2003, 56 L. D. 415, Title 30 C. F. R., Ch. II, Secs. 221.1-221.56, except as to leases and unit agreements in force and effect on June 1, 1942, to which these operating regulations are not applicable.\* #

\*Recommended for approval: W. C. Mendenhall, Director of the Geological Survey.

Approved: March 23, 1942. Harold L. Ickes, Secretary of the Interior.

Approved: May 23, 1942. James Forrestal, Acting Secretary of the Navy.

Approved: May 25, 1942. Franklin D. Roosevelt, President of the United States.

\* For statutory citations, see note to 221.1.

# Not applicable on said effective date to lands acquired under the act known as the Appalachian Forest Act of March 1, 1911, 36 Stat. 961, to lands in national parks, to lands withdrawn or reserved for military or naval uses or purposes, except naval petroleum reserves, or to lands within the Osage Indian Reservation.



United States Department of the Interior, Geological Survey,  
P. O. Box 311, Tulsa, Oklahoma

December 5, 1941.

To Lessees of Federal and Restricted Indian Lands (except Osage)—Mid-Continent District.

### Use of Cement for Plugging Wells

As a matter of general policy operators and lessees abandoning wells under supervision of the Mid-Continent District of the Geological Survey hereafter shall be required to plug off oil-bearing horizons with cement and to fill unplugged portions of the holes with mud fluid.

It has been the general practice in a large part of Oklahoma to plug and abandon wells by filling the holes with mud fluid. Heretofore the Geological Survey has accepted this method of abandonment in most cases as being satisfactory. However in a number of operations using secondary recovery methods, particularly in areas subjected to water flood, certain wells previously abandoned by the use of mud fluid alone, have started leaking oil, gas or water at the surface. In other instances difficulties encountered in repressuring a sand may be attributable to sub-surface losses occurring through old abandoned wells. In view of the recognized importance of secondary recovery methods of production, the necessity of adequate and proper plugging of wells cannot be overemphasized. As the use of cement in plugging off oil-bearing formations is considered to give greater permanency it is believed that this practice should be generally followed.

In the future, notices of intention to abandon wells under supervision of the Geological Survey should provide for cementing off oil-bearing horizons. The notices should include in addition to other pertinent information, complete details with respect to the quantity of cement to be used, the well depths at which it is to be used, and the method to be employed in putting the cement into the well. Exceptions to this procedure may be granted by the District Engineer in charge of the operations, upon presentation of information by the operator which shows beyond a reasonable doubt that the particular horizon involved is

not likely to be repressured, and that a cement plug opposite such horizon would serve no useful purpose.

If additional copies of this letter are needed to inform field superintendents or other employees of this change in abandonment requirements, the desired number of copies will be forwarded upon request.

J. R. Reeve, Supervisor, Oil and Gas Operations.

[fol. 177]

EXHIBIT "P-1"

February 1, 1939.

Mr. Edgar M. Pilkington, United States Geological Survey,  
Federal Building, Oklahoma City, Oklahoma.

Re: Pau-Kune #6, Section 10-5N-9W, Caddo County

DEAR SIR:

In line with conversation with your office this morning we enclose you herewith Form 9-331B covering work we propose to do in the way of drilling deeper Pau-Kune #6, in Section 10-5N-9W, Caddo County, Oklahoma. It is our desire to proceed with this work with the least possible delay and would appreciate very much if you would give us authority to proceed promptly.

Yours very truly,

ENW:IR, cc: K. Bullock, Encl.

[fol. 178]

EXHIBIT "P-2"

(Submit in triplicate)

Form 9-3311. (February 193—)

Indian Agency Kiowa. Allottee Pau-Kune. Lease No. 170.

United States Department of the Interior, Geological  
Survey

Sundry Notices and Reports on Wells

Notice of intention to drill deeper X

Notice of intention to change plans

Notice of Intention to test water shut-off

Notice of intention to redrill or Repair well

Notice of intention to shoot or acidize

Notice of intention to pull or Alter casing  
 Notice of Intention to abandon well  
 Subsequent report of water shut-off  
 Subsequent report of shooting or Acidizing  
 Subsequent report of altering casing  
 Subsequent Report of Redrilling or repair  
 Subsequent Report of abandonment  
 Supplementary well history

(Indicate above by check mark nature of report, notice, or other data)

Oklahoma City, February 1, 1939.

Well No. 6 is located 990 ft. from N line and 330 ft. from E line of sec. 10 SE NE NE Sec. 10 (1/4 Sec. and Sec. No.) 5N (Twp.) 9W (Range) (Meridian) Cement (Field) Caddo (County or Subdivision) Oklahoma (State of Territory).

The elevation of the derrick floor above sea level is — ft.

#### Details of Work

(State names of and expected depths to objective sands; show sizes, weights, and lengths of proposed casings; indicate muddling jobs, cementing points, and all other important proposed work)

The present total depth of the well is 2400' and has 2226' 8 1/4" casing cemented, and 209' of 6 5/8" inserted liner. Our intentions are to pull the liner and drill with rotary 7 7/8" hole to the Howe sand with top of sand approximately 3350', set 7" casing and cement same to bottom of 8". Drilling in with rotary.

I understand that this plan of work must receive approval in writing by the Geological Survey before operations may be commenced.

Company Magnolia Petroleum Company. Address Box 1828, Oklahoma City, Oklahoma. By ——— Title Division Superintendent.

U. S. Government Printing Office 6-7053-b



.[foh 179]

EXHIBIT "p-3"

United States  
Department of the Interior  
Geological Survey

303 Federal Building Oklahoma City, Oklahoma  
February 3, 1939

Pau-Kune, Sec. 10-5N-9W

Magnolia Petroleum Company  
Box 1828  
Oklahoma City, Oklahoma

GENTLEMEN:

Receipt is acknowledged of your "Notice of Intention to deepen" dated February 1, 1939, covering well No. 6 on the subject land in SE NE NE sec. 10, T. 5N, R. 9W. You outline details of proposed work as follows:

The present total depth of the well is 2400' and has 2226' of 8 $\frac{1}{4}$ " casing cemented, and 209' of 6 $\frac{5}{8}$ " inserted liner. Our intentions are to pull the liner and drill with rotary 7 $\frac{7}{8}$ " hole to the Rowe sand with top of sand approximately 3350', set 7" casing and cement same to bottom of 8". Drilling in with rotary.

Your proposed work is hereby approved subject to compliance with the provisions of Section 2 of the "Oil and Gas Operating Regulations", revised November 1, 1936, copy of which will be sent you on request.

Operations on this well will be under the supervision of Mr. E. M. Pilkinton, box 976 Oklahoma City, Oklahoma, telephone 2-1682.

Records and written notices relating to these well operations must be submitted to this office in accordance with Section 5 of said operating regulations. Any proposed change of detail of the work outlined above must be submitted to this office on Form 9-331b, in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed) W. R. Cummings, Acting  
Supervisor, Oil and Gas Operations.

[fol. 180]

EXHIBIT "P-9"

Form 9-3311 (February 193—)

(Submit in triplicate)

United States  
Department of the Interior

Geological Survey

Indian Agency Kiowa Anadarko, Oklahoma  
Allottee Pau Kue. Lease No. 170

## Sundry Notices and Reports on Wells

- Notice of intention to drill-deeper.
- Notice of intention to change plans.
- Notice of Intention to test water shut-off.
- Notice of intention to redrill or Repair well.
- Notice of intention to shoot or acidize.
- Notice of intention to pull or Alter casing.
- Notice of Intention to abandon well. X.
- Subsequent report of water shut-off.
- Subsequent report of shooting or Acidizing.
- Subsequent report of altering casing.
- Subsequent Report of Redrilling or repair.
- Subsequent Report of abandonment.
- Supplementary well history.

(Indicate above by check mark nature of report, notice, or other data).

Oklahoma City, Okla., June 26, 1939

Well No. 4 is located 200 ft. from N line and 1120 ft. from E line of sec. 10 Section 10 (1/4 Sec. and Sec. No.), 5N (Twp.), 9W (Range), Indian (Meridian), Cement (Field), Caddo (County or Subdivision), Oklahoma (State or Territory).

The elevation of the derrick floor above sea level is — ft.

## Details of Work

(State names of and expected depths to objective sands; show sizes, weights, and lengths of proposed casings; indicate muddling jobs, cementing points, and all other important proposed work.)

This well was drilled and completed in July 1922, T.D. 2424'; 8 1/4" casing cemented w/80 sacks at 2246', ran 150' 6 5/8" liner and 110' of 5-3/16" liner. Initial production 30 bbls. It now produces a maximum of 1 barrel of oil per day and no prospects to improve it. Since it is an off location offset obligations will not permit drilling deeper and instead a new well will be drilled. It is our intention to pull 5-3/16" and 6 5/8" liner, shoot off 8 1/4" casing, filling hole with heavy rotary mud as liner and casing is pulled. Work to be done under supervision of Department supervisor and in accordance with regulations.

I understand that this plan of work must receive approval in writing by the Geological Survey before operations may be commenced.

Company: Magnolia Petroleum Company.

Address: Box 1828, Oklahoma City, Okla.

By ———, (Title) Division Superintendent.

U. S. Government Printing Office 6-7053-b.

[fol. 181]

EXHIBIT "P-10"

United States  
Department of the Interior  
Geological Survey

303 Federal Building Oklahoma City, Oklahoma

June 30, 1939

Pau-Kune, Apache 951-Lease 170, N 1/2 NE, 10-5N-9W  
Well No. 4 (NW NE NE.)

Magnolia Petroleum Company

P. O. Box 1828

Oklahoma City, Oklahoma

GENTLEMEN:

Receipt is acknowledged of your "Notice of Intention to Abandon" dated June 26, 1939, covering well No. 4, on the subject land in NW NE NE, Sec. 10, T 5N, R 9W. You outline details of proposed work as follows:

This well was drilled and completed in July 1922, T.D. 2424'; 8 1/4" casing cemented w/80 sacks at 2246'; ran 150' 6 5/8" liner and 110' of 5-3/16" liner. Initial production 30



bbls. It now produces a maximum of 1 barrel of oil per day and no prospects to improve it. Since it is an off location, offset obligations will not permit drilling deeper and instead, a new well will be drilled. It is our intention to pull 5-3/15" and 6 5/8" liner, shoot off 9 1/4" casing, filling hole with heavy rotary mud as liner and casing are pulled. Work is to be done under supervision of Department Supervisor and in accordance with Regulations.

Well No. 4 is located 200 ft. from North line and 1120 ft. from East line of NE 1/4 of Sec. 10-5N-9W, (NW NE NE).

Your prop-sed work is hereby approved subject to compliance with the provisions of Section 2 of the "Oil and Gas Operating Regulations", revised November 1, 1936, copy of which will be sent you on request.

As heavy rotary mud is to be used in mudding, mud must be kept up in the casing at all times. Please notify this office in advance of actual plugging work in order that an engineer from this office may have the opportunity to be present and supervise and witness abandonment work.

Records and written notices relating to these well operations must be submitted to this office in accordance with Section 5 of said operating regulations. Any proposed change of detail of the work outlined above must be submitted to this office on Form 9-331b, in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed) Edgar M. Pilkinton  
District Engineer.

EMP:MCB.

cc—Kiowa Indian Agency, Tulsa Office, USGS.

[fol. 182]

EXHIBIT "P-11"

Form 9-3311 (February 193—

(Submit in triplicate)

United States  
Department of the Interior  
Geological Survey

Indian Agency Kiowa, Anadarko, Oklahoma, Allottee  
Pau Kune, Lease No. 170

Sundry Notices and Reports on Wells

Notice of intention to drill. X

Notice of intention to change plans.

Notice of Intention to test water shut-off.  
 Notice of intention to redrill or Repair well.  
 Notice of intention to shoot or acidize.  
 Notice of intention to pull or Alter casing.  
 Notice of Intention to abandon well.  
 Subsequent report of water shut-off.  
 Subsequent report of shooting or Acidizing.  
 Subsequent report of altering casing.  
 Subsequent Report of Redrilling or repair..  
 Subsequent Report of abandonment.  
 Supplementary well history.

(Indicate above by check mark nature of report, notice, or other data)

Oklahoma City; Okla., June 26, 1939

Well No. 9 is located 330 ft. from N line and 990 ft. from E line of sec. 10 NW NE NE 10 ( $\frac{1}{4}$  Sec. and Sec. No.), 5N (Twp.), 9W (Range), Indian (Meridian), Cement (Field), Caddo (County or Subdivision), Oklahoma (State or Territory).

The elevation of the derrick floor above sea level is        ft.

#### Details of Work

(State names of and expected depths to objective sands; show sizes, weights, and lengths of proposed casings; indicate muddling jobs, cementing points, and all other important proposed work.)

It is our intention to drill Pau Kune No. 9 in the above location to an approximate Total Depth of 3400'. Will set 13" at approximately 280', cement g with 300 sacks. Drill 9" hole with Rotary Tools and set 7" at approximately 3325' and cement w/1000 sacks cement. Expect to find top of sand around 3335' and Total Depth of well will be dependent upon sand encountered. Well will be drilled in with Rotary coring ahead.

I understand that this plan of work must receive approval in writing by the Geological Survey before operations may be commenced.

Company: Magnolia Petroleum Company.

Address: Box 1828 Oklahoma City, Oklahoma.

By              , (Title) Division Superintendent  
 U. S. Government Printing Office 6-7053-b

[fol. 183]

## EXHIBIT "P-12"

United States Department of the Interior

Geological Survey

302 Federal Building, Oklahoma City, Oklahoma

June 30, 1939.

Pau-Kune, Apache 951—Lease 170, N $\frac{1}{2}$  NE, 10-5N-9W  
Well No. 9 (NW NE NE)

Magnolia Petroleum Company,  
P. O. Box 1828,  
Oklahoma City, Oklahoma.

GENTLEMEN:

Receipt is acknowledged of your "Notice of Intention to Drill" dated June 26, 1939, covering well No. 9, on the subject land in NW NE NE, Sec. 10 T5N, R9W. You outline details of proposed work as follows:

It is our intention to drill Pau-Kune # 9 in the above location to an approximate Total Depth of 3400'. Will set 13" at approximately 280', cementing with 300 sacks. Drill 9' hole with Rotary Tools and set 7" at approximately 3325' and cement with 1000 sacks cement. Expect to find top of sand around 3335' and total depth of well will be dependent upon sand encountered. Well will be drilled in with Rotary coring ahead.

Well No. 9 is located 330 ft. from North line and 990 ft. from East line of NE $\frac{1}{4}$  of Sec. 10-5N-9W, (NW NE NE).

Your proposed work is hereby approved subject to compliance with the provisions of Section 2 of the "Oil and Gas Operating Regulations", revised November 1, 1936, copy of which will be sent you on request.

Records and written notices relating to these well operations must be submitted to this office in accordance with Section 5 of said operating regulations. Any proposed change of detail of the work outlined above must be submitted to this office on Form 9-331b, in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed) Edgar M. Pilkinton,  
District Engineer

EMP: MCB.

cc—Kiowa Indian Agency, Tulsa Office, USGS.



[fol. 184]

## EXHIBIT "P-14"

Form 9-3311 (February 193—)

(Submit in triplicate)

United States Department of the Interior  
Geological Survey

Indian Agency Kiowa, Allottee Pau Kune, Lease No. 170

## Sundry Notices and Reports on Wells

Notice of intention to drill deeper.

Notice of intention to change plans.

Notice of Intention to test water shut-off.

Notice of intention to redrill or Repair well.

Notice of intention to shoot or acidize.

Notice of intention to pull or Alter casing.

Notice of Intention to Abandon well.

Subsequent report of water shut-off.

Subsequent report of shooting or Acidizing.

Subsequent report of altering casing.

Subsequent Report of Redrilling or repair.

Subsequent Report of abandonment. X.

Supplementary well history.

(Indicate above by check mark nature of report, notice,  
or other data.)

7-24, 19—

Well No. 4 is located 200 ft. from N line and 1120 ft. from E line of sec. 10 NW NE NE (1/4 Sec. and Sec. No.), 5 (Twp.), 9W (Range), Indian (Meridian), Cement (Field), Caddo (County or Subdivision), Oklahoma (State or Territory).

The elevation of the derrick floor above sea level is — ft.

## Details of Work

(State names of and expected depths to objective sands; show sizes, weights, and lengths of proposed casings; indicate muddling jobs, cementing points and all other important proposed work.)

Steel liner run to 2424'. No obstructions, hole filled with rotary mud to top, mud introduced into hole with pump. Top of hole left open for refilling when mud settles. No

plugs were used. 8 $\frac{1}{4}$ " casing pulled out of hole 871'; 8 $\frac{1}{4}$ " casing left in hole 1375'; 6 $\frac{5}{8}$ " liner left in hole 150'; 5-3/16" liner left in hole 110'.

I understand that this plan of work must receive approval in writing by the Geological Survey before operations may be commenced.

Company: Magnolia Petroleum Company.

Address: Box 900, Dallas, Joe Givens, S. S. Young.

By J. C. Shaw, (Title) Dist. Supt.

U. S. Government Printing Office 6-7053-b

[fol. 185]

### EXHIBIT "P-21"

Form 9-3311 (February 193-)

(Submit in triplicate)

United States Department of the Interior,  
Geological Survey,  
Indian Agency Kiowa.

Allottee Pau-Kune, Lease No. 170

#### Sundry Notices and Reports on Wells

Notice of intention to drill deeper. X  
 Notice of intention to change plans.  
~~Notice of Intention to test water shut-off.~~  
 Notice of intention to redrill or Repair well.  
 Notice of intention to shoot or acidize.  
 Notice of intention to pull or Alter casing.  
 Notice of Intention to abandon well.  
 Subsequent report of water shut-off.  
 Subsequent report of shooting or Acidizing.  
 Subsequent report of altering casing.  
 Subsequent Report of Redrilling or repair.  
 Subsequent Report of abandonment.  
 Supplementary well history.

(Indicate above by check mark nature of report, notice, or other data.)

Oklahoma City, Okla., October 3, 1939.

Well No. 7 is located 360 ft. from S line and 200 ft. from W line of sec. 10 SW NE NE ( $\frac{1}{4}$  Sec. and Sec. No.).

5N (Twp.). 9W (Range). — (Meridian). Cement (Field). Caddo (County or Subdivision). Oklahoma (State or Territory).

The elevation of the derrick floor above sea level is — ft.

#### Details of Work

(State names of and expected depths to objective sands; show sizes, weights, and lengths of proposed casings; indicate muddling jobs, cementing points, and all other important proposed work.)

This well is now producing 2 barrels of oil and 2 barrels of water per day from shallow sands bottomed at 2437'. It is desired to deepen to the Bigley Sand for the purpose of developing profitable production if possible. 8 $\frac{5}{8}$ " OD casing is cemented at 2125'. Hole has 380' of 10" liner extending from 2057' to bottom. We expect to pull the 6 $\frac{5}{8}$ " liner, deepen with a rotary outfit, cement 7" OD casing at approximately 3350' with 750 sacks cement, to drill plug with a rotary and wash or swab out rotary mud as heretofore on wells deepened in this area.

Well to be drilled to approximately 3375'.

I understand that this plan of work must receive approval in writing by the Geological Survey before operations may be commenced.

Company, Magnolia Petroleum Company, Address, Box 1828, Oklahoma City, Oklahoma, by A. H. Proctor, Title, Division Superintendent.

U. S. Government Printing Office 6-7053-b.

[fol. 186]

#### EXHIBIT "P-22"

United States Department of the Interior,  
Geological Survey,  
302 Federal Building, Oklahoma City, Oklahoma

October 5, 1939.

Pau-Kune. Apache 951—Lease 170. N $\frac{1}{2}$  NE, 10-5N-9W.  
Well No. 7 (SW NE NE)

Magnolia Petroleum Company, P. O. Box 1828, Oklahoma City, Oklahoma.

GENTLEMEN:

Receipt is acknowledged of your "Notice of Intention to Drill Deeper" dated Oct. 3, 1939, covering well No. 7, on the



subject land in SW NE NE, Sec. 10 T5N, R9W. You outline details of proposed work as follows:

This well is now producing 2 barrels of oil and 2 barrels of water per day from shallow sands bottomed at 2437'. It is desired to deepen to the Bigley Sand for the purpose of developing profitable production if possible. 8<sup>5</sup>/<sub>8</sub>" OD casing is cemented at 2125'. Hole has 380' of 10" liner extending from 2057' to bottom. We expect to pull the 6<sup>5</sup>/<sub>8</sub>" liner, deepen with a rotary outfit, cement 7" OD casing at approximately 3350' with 750 sacks cement, to drill plug with a rotary and wash or swab out rotary mud as heretofore on wells deepened in this area.

Well No. 7 is located 990 ft. from North line and 1120 ft. from East line of NE<sup>1</sup>/<sub>4</sub> of Sec. 10-5N-9W (SW NE NE).

Your proposed work is hereby approved subject to compliance with the provisions of Section 2 of the "oil and Gas Operating Regulations", revised November 1, 1936, copy of which will be sent you on request.

Records and written notices relating to these well operations must be submitted to this office in accordance with Section 5 of said operating regulations. Any proposed change of detail of the work outlined above must be submitted to this office on Form 9-331b, in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed) Edgar M. Pilkinton, District Engineer.

EMP:MCB.

cc—Kiowa Indian Agency.

Tulsa Office USGS.

(Here follows 1 Photolithograph side folio 187)











[fol. 188]

## EXHIBIT "P-26"

United States Department of the Interior,  
Geological Survey,  
P. O. Box 976, Oklahoma City, Oklahoma

November 22, 1940.

Pau-Kune. Apache 951—Lease 170-E. N $\frac{1}{2}$  NE, 10-5N-9W  
Well No. 2 (C N $\frac{1}{2}$  N $\frac{1}{2}$  NW NE)

Magnolia Petroleum Company, P. O. Box 1828, Oklahoma  
City, Oklahoma.

GENTLEMEN:

Receipt is acknowledged of your "Notice of Intention to Deepen and Test" dated Nov. 19, 1940, covering well No. 2, on the subject land in C N $\frac{1}{2}$  N $\frac{1}{2}$  NW NE, Sec. 10, T5N, R9W. You outline details of proposed work as follows:

This well was drilled to a total depth of 2416' in 1921 and completed for an estimated 200 barrel daily capacity in Cement sand, approximately 2407' to 2414'. The well has declined in production to 3 barrels daily. Due to Bigley sand production offsetting this well to north, it is desired to drill deeper Pau-Kune #2 to test this sand to be found approximately 3350'. 8 $\frac{1}{4}$ "—2203' with 100 sacks of cement in 1921. We expect to pull 260' of 6 $\frac{5}{8}$ " liner now in well and run and cement 7" OD; casing on top of sand with 500 sacks cement. Hole will be drilled with rotary. Well No. 2 is located 200 ft. from N. line and 660 ft. from W. line of NE $\frac{1}{4}$ , or C N $\frac{1}{2}$  N $\frac{1}{2}$  NW NE, 10-5N-9W.

Your proposed work is hereby approved subject to compliance with the provisions of Section 2 of the "Oil and Gas Operating Regulations" revised November 1, 1936, copy of which will be sent you on request.

Records and written notices relating to these well operations must be submitted to this office in accordance with Section 5 of said operating regulations. Any proposed change of detail of the work outlined above must be submitted to this office on Form 9-331b, in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed) Edgar M. Pilkinton, District Engineer.

EMP: MCB.

cc-Kiowa Indian Agency.

Tulsa Office USGS.

United States Department of the Interior,  
Geological Survey,  
P. O. Box 976, Oklahoma City 1, Okla.

April 29, 1944.

Pau-Kane. Apache 951—Lease 170-E. Well No. 11-SW  
NE NE. 10-5N-9W

Magnolia Petroleum Company, P. O. Box 1828, Oklahoma  
City 1, Oklahoma

GENTLEMEN :

Receipt is acknowledged of your Notice of Intention dated April 28, 1944, to Drill & Test well No. 11 on the subject land in SW NW NE being 330 ft. from (S) line & 330 Ft. from (W) line of

NW NE	10	5N	9 W	Indian	Cement
( $\frac{1}{4}$ )	(Sec.)	(T)	(R)	(Mer.)	(Field)

The proposed work as stated on said notice is hereby approved subject to compliance with the provisions of the applicable Oil and Gas Operating Regulations and subject to the additional conditions as follows:

1. The regular log (in triplicate) must include descriptions of any cores taken and all available geologic data. A special log (in duplicate) shall be files of any electrical or other survey made of this well.

2. Operations on this well will be under the supervision of the Oklahoma City Office of the Geological Survey, telephone 2-1682, Box 276, Oklahoma City 1, Oklahoma. You are requested to notify the District Engineer of the date on which drilling operations are commenced.

Particular attention is directed to the requirements for lessees provided in Sections 221.18 to 221.56, inclusive, of the Operating Regulations. Generally, records and written notices relating to well operations must be submitted in accordance with Sections 221.57 to 221.59, inclusive, of said Regulations. No change in the proposed operations as herein approved will be permitted unless acceptable notice of intention to change plans is submitted on Form 9-331b,

in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed) John A. Anderson, District Engineer.

JAA:mcb.

cc—Kiowa Indian Agency.

Tulsa Office USGS.

[fol. 190]

EXHIBIT "Q-1"

United States Department of the Interior,

Office of Indian Affairs, Field Service

Shawnee Indian Agency,

Shawnee, Oklahoma,

November 19, 1940.

Magnolia Petroleum Corp., Dallas, Texas.

GENTLEMEN:

This will refer to your oil and gas lease on the west  $\frac{3}{4}$  of the W/2 W/2 SE/4 of 13-7-4, now owned by Nicholas Vieux, being the allotment of Madeline Bourbonnais, deceased Pott. No. 616.

Some time ago an animal belonging to Mr. Vieux fell into the slush pit located just south of the producing well and at that time an employee of your company promised to construct a fence around this pit; however, nothing has been done.

Since Mr. Vieux has stock running at large around this location, it is believed he is not asking too much to have the pit enclosed; therefore, may I request that the matter be given due attention.

Respectfully, (Signed) A. C. Hector, Superintendent.

ODL/nmc.

006.

#616. S. & F.



United States Department of the Interior  
Geological Survey

302 Federal Building, Oklahoma City, Oklahoma

June 27, 1936.

Nicholas Vieux,  $W\frac{3}{4} W\frac{1}{2} W\frac{1}{2}$  SE, 13-7N-4E

Magnolia Petroleum Company, Box 1828, Oklahoma City,  
Oklahoma.

GENTLEMEN:

We have received your letter of June 26, 1936, transmitting supplemental well record reports covering the plugging back and acidizing of the Sompson Dolomite and duplicate notices of intention to plug back, rip casing and acidize the Hunton Line.

This will confirm my telephone conversation with Mr. Chandler; at which time he was granted oral permission to plug back, rip, and acidize the Hunton Lime. Mr. Chandler stated that you wished to plug back temporarily with mud and acidize the Hunton to determine if production would be commercial. However, in the event production is in commercial quantities, the hole must be plugged back with cement instead of mud.

We are enclosing a supply of "Supplemental Well Record" forms for your convenience. Duplicate reports must be filed with this office within 15 days after the completion of the plugging back and acidization of the well.

Please inform us if and when it will be necessary to replace this mud plug between the Dolomite and the Hunton with cement.

Yours very truly, Supervisor, Oil and Gas Operations,  
by (Signed) Edgar M. Pilkington, Associate  
Petroleum Engineer.

EMP:MCB.

Enclosures.

cc—Shawnee Indian Agency.

[fol. 192]

## EXHIBIT "R-2"

United States Department of the Interior

Geological Survey

302 Federal Building, Oklahoma City, Oklahoma

July 2, 1936.

Angeline Nona, Pott. 120, NW, 11-7N-4E

Magnolia Petroleum Company, Box 1828, Oklahoma City,  
Oklahoma.

GENTLEMEN:

We have just received your letter of July 1, 1936, transmitting duplicate notices of intention to deepen and to acidize well No. 1 on the subject lease.

You are hereby granted permission to deepen and to acidize this well in the Hunton Lime.

Enclosed is a supply of "Supplemental Well Record" forms for your convenience.

Very truly yours, Supervisor, Oil & Gas Operations,  
by (Signed) Edgar M. Pilkington, Associate  
Petroleum Engineer.

EMP:MCB.

Enclosure.

cc—Shawnee Indian Agency.

[fol. 193]

## EXHIBIT "R-4"

(Map Plat)

Department of the Interior, Office of Indian Affairs in  
Cooperation with the Geological Survey Supplemental  
Well Record

Note—This Supplemental well record of the deepening, plugging back, altering of casing, etc., done on the well since the previous record was filed must be submitted in Duplicate to the Superintendent or his agent not later than 15 days after work is completed as provided in Section 18 of Operating Regulations approved July 7, 1925.

Company operating: Magnolia Petroleum Company.  
Office address: Box 900, Dallas, Texas.  
Lessor: Joseph Nona.

Well No. 1, Sec. 11, Twp. 7N, Rge. 4E. County: Pottawatomie. Located in SE $\frac{1}{4}$  NW $\frac{1}{4}$  330 Ft. N of South line and 330 Ft. W of East line. Date previous record filed July 8, 1936. Original depth last reported 4095, 19—. Reason for doing work: Acidizing well. Present total depth 4095. Commenced work July 10th, 1936. Completed work July 10th, 1936.

List below all work done on well, such as redrilling, deepening record, alteration of casing in well, type of plugs used in plugging back, shooting record, and preparation of well for repressuring an area, etc. Give results of operation.

Acidized July 10, 1936, with 1000 Gallons Acid under load of 216 Bbls. of oil through 2" Tubing. Well took 10 Points Vacuum. Production before acidizing, pumped 3 Bbls. oil. Production after Acidizing, pumped 3 Bbls. oil. Have not recovered oil load.

Signed: Wm. Hoskinson.

Date July 17, 1936.

Address of Agent: Box 77, Saint Louis, Okla. Agent's title: Sup't for Magnolia Petroleum Co.

This page is for the condition of the well at above date and constitutes a complete and correct record of all work done thereon. Additional information may be placed on reverse side.

-U. S. Government Office 1930. 6-8024.



[fol. 194]

## EXHIBIT "R-6"

United States Department of the Interior  
Geological Survey

411 Federal Building, Oklahoma City, Oklahoma

February 9, 1942.

Angeline Nona, decd., Pott. 120—Lease #10793, NW,  
11-7N-4E, Well No. 3 (C NE NW)

Magnolia Petroleum Company, P. O. Box 1828, Oklahoma  
City, Oklahoma.

GENTLEMEN:

Receipt is acknowledged of your "Notice of Intention to Drill & Test" dated Feb. 6, 1942, covering well No. 3, on the subject land in C NE NW, Sec. 11, T. 7N, R. 4E. You outline details of proposed work as follows:

We are desirous of drilling a well on the Joseph Nona lease located as above and to begin same as early as possible to do so. This well is to be drilled with rotary tools to the Hunton lime at approximately 3950 feet. We will set and cement approximately 80 feet of 10 $\frac{3}{4}$ " surface pipe, and set string of 7" casing on top of the Hunton lime, cementing same with 250 sacks of cement. The well will be drilled in with Standard Tools and acidized with 3000 gallons of acid. This spacing conforms to Federal Regulations "M-68" and all work will be performed in accordance with the Department's regulations.

We respectfully request the authority to proceed with the work.

"Well No. 3 is located 660 ft. from North line and 660 ft. from East line of NW, 11-7N-4E (C NE NW)."

Your proposed work is hereby approved subject to compliance with the provisions of Section 2 of the "Oil and Gas Operating Regulations", revised November 1, 1936, copy of which will be sent you on request.

If electrical or other survey is made, duplicate log of the special survey must be furnished in addition to regular geologic log in triplicate. This approval is granted subject to the condition that drilling operations so authorized shall

be in conformity with the terms and conditions of OPM Order M-68, or any modification or amendment thereof that hereafter may be issued.

Records and written notices relating to these well operations must be submitted to this office in accordance with Section 5 of said operating regulations. Any proposed change of detail of the work outlined above must be submitted to this office on Form 9-331b, in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed) Edgar M. Pilkington,  
District Engineer.

EMP:MCB.

cc—Shawnee Indian Agency.  
Tulsa Office USGS.

[fol. 195] United States Department of the Interior  
Geological Survey

August 23, 1938.

Lease or Permit No., or Name of Allottee. Frank Davis,  
Pott. 809—Lease 10480 N $\frac{1}{4}$  NE, 15-7N-4E

Magnolia Petroleum Company, P. O. Box 1828, Oklahoma  
City, Oklahoma.

GENTLEMEN:

Receipt is acknowledged of your "Notice of Intention to Plug Back, Perf., & Test" dated Aug. 22, 1938, covering well No. 3 on the subject land in NW NE NE, Sec. 15 T. 7N, R. 4E. You outline details of proposed work as follows:

"We propose to plug back this well to the Calvin Sand as follows: Original total depth was 4157' in the Simpson with hole full of water, water was plugged off to total depth 4127', well was acidized and completed for 40 barrels per day in April 1935. We now propose to cement off the bottom, then cement top of 5-3/16" liner, which is set at 3712'; or 41 ft. up in the 7" casing—fill up with mud to approximately 3100', and cement on top at this point. We plan to perforate the 7" casing around 3150' to test the Calvin Sand. If production is found in Calvin, the hole will be in shape to produce, if not and we should wish to

do so, we could drill out the cement and resume pumping from the Simpson by using the cement *squeeze* job on the perforation." "Well No. 3 is located 330' from N. line and 990' from E. line of NE, sec. 15-7N-4E."

Your proposed work is hereby approved subject to compliance with the provisions of Section 2 of the "Oil and Gas Operating Regulations", revised November 1, 1936, copy of which will be sent you on request.

Records and written notices relating to these well operations must be submitted to this office in accordance with Section 5 of said operating regulations. Any proposed change of detail of the work outlined above must be submitted to this office on Form 9-331b, in triplicate, and approval obtained before such work is commenced.

Very truly yours, (signed) Edgar M. Pilkington,  
Act. District Engineer.

EMP:MCB.

cc—Shawnee Indian Agency.

Tulsa Office (USGS).

[fol. 196]

EXHIBIT "S-13"

United States Department of the Interior

Geological Survey

Box 976, Oklahoma City 1, Oklahoma

June 21, 1945.

Frank Davis. Pott. 809—Lease 10480. Well No. 1, SE NE  
N  $\frac{1}{4}$ , 15-7N-4E

Magnolia Petroleum Company, P. O. Box 1828, Oklahoma  
City, 1, Oklahoma.

GENTLEMEN:

Receipt is acknowledged of your Notice of Intention dated May 18, 1945 to Plug-Back & Test Hunton Lime Well No. 1 on the subject land in SE NE NE being 990 ft. from (N) (M) line & 330 ft. from (E) (M) line of NE  $\frac{1}{4}$  ( $\frac{1}{4}$ ), 15 (Sec.), 7N (T.), 4E (R.), Indian (Mer.), St. Louis (Field).

The proposed work as stated on said notice is hereby



approved subject to compliance with the provisions of the applicable Oil and Gas Operating Regulations and subject to the additional conditions as follows:

Your proposal is approved as to plugging-back and testing the Hunton only. If the Hunton proves non-productive, please notify this office before commencing abandonment work.

A subsequent report of the work done and the results obtained should be submitted upon plugging-back and testing. A proposal to abandon may be included in applicable.

Please notify this office when the work is to be started in order that a representative may be present if circumstances permit.

Particular attention is directed to the requirements for lessees provided in Sections 221.18 to 221.56, inclusive, of the Operating Regulations. Generally, records and written notices relating to well operations must be submitted in accordance with Sections 221.57 to 221.59, inclusive, of said Regulations. No change in the proposed operations as herein approved will be permitted unless acceptable notice of intention to change plans is submitted on Form 9-331b, in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed) John A. Anderson,  
Deputy Supervisor.

JAA:mcb.

[fol. 197]

EXHIBIT "S-16"

United States Department of the Interior

Geological Survey

Box 976, Oklahoma City 1, Okla.

Frank Davis, Pott. 809—Lease 10480. Well No. 1, SE NE NE, 15-7N-4E.

Magnolia Petroleum Co., P. O. Box 1828, Oklahoma City 1, Okla.

GENTLEMEN:

Receipt is acknowledged of your Notice of Intention dated Dec. 26, 1945 to Abandon Well No. 1 on the subject land in SE NE NE being 990 ft. from (N) (M) line & 330 ft.

from (E) (M) line of NE $\frac{1}{4}$ , (1 $\frac{1}{4}$ ) 15 (Sec.), 7N (T), NE (R) Indian (Mer.), St. Louis (Field). The proposed work as stated on said notice is hereby approved subject to compliance with the provisions of the applicable Oil and Gas Operating Regulations and subject to the additional conditions as follows:

Fill hole with heavy mud as casing strings are pulled. No cement is to be placed in the well at the surface until the mud column has settled and any necessary additional mud has been added. Please notify this office when abandonment work will be started so that we may have a representative present if circumstances permit.

A subsequent report of abandonment must be submitted in triplicate upon completion of the work.

Particular attention is directed to the requirements for lessees provided in Sections 221.18 to 221.56, inclusive, of the Operating Regulations. Generally, records and written notices relating to well operations must be submitted in accordance with Sections 221.57 to 221.59, inclusive, of said Regulations. No change in the proposed operations as herein approved will be permitted unless acceptable notice of intention to change plans is submitted on Form 9-331b, in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed) John A. Anderson, Deputy Supervisor.

JJA:mcb.

cc—Shawnee Indian Agency, Tulsa Office USGS.

[fol. 198]

# EXHIBIT "S-18"

United States Department of the Interior

Geological Survey

Box 976, Oklahoma City 1, Okla.

Frank Davis, Pott 809—Lease 10480, Well No. 2, NE NE NE, 15-7N-4E.

Magnolia Petroleum Co., P. O. Box 1828, Oklahoma City 1, Okla.

GENTLEMEN:

Receipt is acknowledged of your Notice of Intention dated Jan. 9, 1946 to Abandon well No. 2 on the subject land in

NE NE NE being 330 fe from (N) (X) line & 330 ft. from (E) (X) line of NE (1/4), 15 (Sed.), 7N 4E (R.), Indian (Mer.), St. Louis (Field.).

The proposed work as stated on said notice is hereby approved subject to compliance with the provisions of the applicable Oil and Gas Operating Regulations and subject to the additional conditions as follows:

Fill hole with heavy mud to the point at which the 8 1/4-inch casing is to be parted. Fill the remainder of the hole with heavy mud as the casing is pulled. No cement plug is to be placed in the well at the surface until the mud column has settled and any necessary additional mud added.

Please notify this office of the date on which plugging operations will be started in order that we may have a representative present if circumstances permit.

Particular attention is directed to the requirements for lessees provided in Sections 221.18 to 221.46, inclusive, of the Operating Regulations. Generally, records and written notices relating to well operations must be submitted in accordance with Sections 221.57 to 221.59, inclusive, of said Regulations. No change in the proposed operations as herein approved will be permitted unless acceptable notice of intention to change plans is submitted on Form 9-331b, in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed), John A. Anderson, Deputy Supervisor. T. L. C.

JJA:b.

cc-Kiowa Indian Agency, Tulsa Office USGS.



[fol. 199]

## EXHIBIT T-4

United States Department of the Interior

Geological Survey

302 Federal Building, Oklahoma City, Oklahoma

March 8, 1940.

KLA-DA-ING. Apache 942—Lease 171F, N $\frac{1}{2}$  NW SW,  
3-5N-9W. Well No. 2 (NE NW SW).

Magnolia Petroleum Co., P. O. Box 1828, Oklahoma City 1,  
Okla.

Attention: Mr. A. H. Proctor

GENTLEMEN:

Reference is made to your letter of March 5, 1940, transmitting "Notice of Intention to Drill" well No. 2 on the subject lease.

The "Notice" was unsigned and it is being returned herewith for signatures. Please add to your "Notice" the size and amount of surface casing and amount of cement expected to be used. State if drilling-in will be done with cable tools. To simplify notices, it is suggested that *water shut-off* and *shoot, acidize, or perforate* be added to the drilling notice by the appropriate mark in the box provided at the top of the blue form, as indicated.

Your proposed location, 2152 feet from South line and 1130 feet from West line of SW $\frac{1}{4}$  of Section 3, puts the well on that portion of right of way conveyed to the Frisco Railway by Indian deed, which was approved by the Department on March 22, 1930. You state that the Frisco Agent at Cement advised your representative that he had instructions to not permit any starting of operations on this part of the tract. For the reason that there is a probably controversy imminent respecting the title and jurisdiction of the railroad right of way across this allotment, it would, no doubt, be advisable to move your proposed location to a point off this right of way. When you have selected the most advisable spot, please furnish in quintuplicate your justification for same, including geological data with cross sections.

Upon receipt of the foregoing, the case may be referred to Washington for consideration.

Very truly yours (Signed) Edgar M. Pilkinton, District Engineer.

EMP:MCB.

cc-Kiowa Indian Agency, Enclosure.

[fol. 200]

EXHIBIT "U-2"

United States Department of the Interior

Geological Survey

Box 976, Oklahoma City 1, Okla.

March 22, 1946.

T1S-SO-YO. Comanche 366—Lease 76 NW SE SE, 22-1S-9W, Well No. 5.

Magnolia Petroleum Co., P. O. Box 1828, Oklahoma City 1, Okla.

GENTLEMEN:

Receipt is acknowledged of your Notice of Intention dated March 15, 1946 to Drill & Test Well No. 5 on the subject land in NW SE SE Being 990 ft. from (/) (S) line 990 ft. from (E) (/) line of SE $\frac{1}{4}$  ( $\frac{1}{4}$ ), 22 (Sec.), 1S (T), 9W (R.), Indian (Mer.), Walters (Field).

The proposed work as stated on said notice is hereby approved subject to compliance with the provisions of the applicable Oil and Gas Operating Regulations and subject to the additional conditions as follows:

1. Submit to this office:

(a) Three copies of Well Record (form 9-569). Include tops of geologic formations identified, core descriptions, and dates and results of all production tests. Incomplete logs will be returned for additions.

(b) Two copies of any electric or other well survey made.

2. Notify this office of the date drilling operations are started.

Particular attention is directed to the requirements for leases provided in Sections 221.18 to 221.56, inclusive, of

the Operating Regulations. Generally, records and written notices relating to well operations must be submitted in accordance with sections 221.57 to 221.59, inclusive, of said Regulations. No change in the proposed operations as herein approved will be permitted unless acceptable notice of intention to change plans is submitted on Form 9-331b, in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed) John A. Anderson, Deputy Supervisor.

JAA:mcb.

cc—Kiowa Indian Agency, Tulsa Office, USGS.

[fol. 201]

EXHIBIT "U-3"

(Submit in triplicate)

United States Department of the Interior

Geological Survey

Form 9-2311.

(February 193—)

Indian Agency Kiowa Commanche 366. Allottee Tis so  
yo. Lease No. 76.

### Sundry Notices and Reports on Wells

- Notice of intention to drill deeper.
- Notice of intention to change plans.
- Notice of Intention to test water shut-off.
- Notice of intention to redrill or Repair well.
- Notice of intention to shoot or acidize.
- Notice of intention to pull or alter casing.
- Notice of Intention to abandon well.
- Subsequent report of water shut-off.
- Subsequent report of shooting or Acidizing.
- Subsequent report of altering casing.
- Subsequent Report of Redrilling or repair.
- Subsequent Report of abandonment.
- Supplementary well history.
- Notice of intention to drill deeper—X.



(Indicate above by check mark nature of report, notice, or other data.)

Oklahoma City, 4-1-46.

Well No. 5 is located 990 ft. from S line and 990 ft. from E line of sec. 22 ( $\frac{1}{4}$  Sec. and Sec. No), 15 (Twp.), 9W (Range), Indian (Meridian), Walters (Field), Stephens (County or Subdivision), Oklahoma (State or Territory). The elevation of the derrick floor above sea level is — ft.

#### Details of Work

(State names of and expected depths to objective sands; show sizes, weights, and lengths of proposed casings; indicate muddling jobs, cementing points, and all other important proposed work.) Pursuant to authority granted by the Department, above well has been drilled to 2200'. Expected sand was not found at that depth and it is now our desire to test the Arbuckle expected at approximately 3700'. If authorized, we will drill to that depth with rotary, set and cement 7" on top of sand and drill in with standard tools. Well will be shot or acidized should it be deemed advisable. Work will be done in accordance with Departmental provisions and regulations.

I understand that this plan of work must receive approval in writing by the Geological Survey before operations may be commenced.

Company Magnolia Petroleum Company, Address  
Box 1828, Oklahoma City, Oklahoma, by Division  
Superintendent, Title (signed by) A. H. Proctor.

[fol. 202]

EXHIBIT "U-4"

United States Department of the Interior

Geological Survey

Box 976, Oklahoma City 1, Okla.

April 3, 1946.

TIS-SO-YO. Comanche 366. - Lease 76: NW SE SE,  
22-1S-9W. (Well No. 5.)

Magnolia Petroleum Co., P. O. Box 1828, Oklahoma City 1,  
Okla.

GENTLEMEN:

Receipt is acknowledged of your Notice of Intention dated April 1, 1946 to Drill Deeper well No. 5 on the subject land in NW SE SE being 990 ft. from South line & 990 ft. from East line of SE $\frac{1}{4}$  ( $\frac{1}{4}$ ), 22 (Sec.), 1S (T.); 9W (R.), Indian (Mer.), Walters (Field).

The proposed work as stated on said notice is hereby approved subject to compliance with the provisions of the applicable Oil and Gas Operating Regulations and subject to the additional conditions as follows:

This confirms approval to drill deeper given you by telephone on April 1.

Particular attention is directed to the requirements for lessees provided in Section 221.18 to 221.56, inclusive of the Operating Regulations. Generally, records and written notices relating to well operations must be submitted in accordance with Sections 221.57 to 221.59, inclusive, of said Regulations. No change in the proposed operations as herein approved will be permitted unless acceptable notice of intention to change plans is submitted on Form 9-331b, in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed) John A. Anderson, Deputy Supervisor.

JAA:b.

cc—Kiowa Indian Agency, Tulsa Office USGS.

[fol. 203]

## EXHIBIT "V-2"

United States Department of the Interior  
Geological Survey

P. O. Box 976, Oklahoma City, Oklahoma

November 4, 1943.

Rachael H. Robedeaux, Otoe 186—Lease 78, Well No. 2,  
SE SE SE, 32-23N-3EMagnolia Petroleum Company, P. O. Box 1828, Oklahoma  
City, Oklahoma.

## GENTLEMEN:

Receipt is acknowledged of your Notice of Intention dated Nov. 1, 1943, to Plub Back & Test well No. 2 on the subject land in SE SE SE being 330 ft. from (S) line & 330 ft. from (E) line of SE ( $\frac{1}{4}$ ), 32 (Sec.), 23N (T.), 3E (R.), Indian (Mer.), Watchorn (Field).

The proposed work as stated on said notice is hereby approved subject to compliance with the provisions of the applicable Oil and Gas Operating Regulations and subject to the additional conditions as follows:

A subsequent report of the work done and the results obtained must be submitted upon completion of the operations authorized.

Please notify this office of the date on which the work will be started.

Particular attention is directed to the requirements for lessees provided in Sections 221.18 to 221.56, inclusive, of the Operating Regulations. Generally, records and written notices relating to well operations must be submitted in accordance with sections 221.57 to 221.59, inclusive, of said Regulations. No change in the proposed operations as herein approved will be permitted unless acceptable notice of intention to change plans is submitted on Form 9-331b, in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed) John A. Anderson, District Engineer.

JAA:MCB.

cc—Pawnee Indian Agency.

cc—Tulsa Office USGS.



[fol. 204]

## EXHIBIT "V-6"

United States Department of the Interior

Geological Survey

P. O. Box 976, Oklahoma City 1, Oklahoma.

February 17, 1944.

Rachael H. Robedeaux, Otoe 186—Lease 78, Well No. 2,  
SE SE SE, 32-22N-3E

Magnolia Petroleum Company, P. O. Box 1828, Oklahoma  
City, Oklahoma.

GENTLEMEN:

Receipt is acknowledged of your Notice of Intention dated February 14, 1944 to Abandon Well No. 2 on the subject land in SE SE SE being 330 ft. from (W) (S) line & 330 ft. from (E) (M) line of SE (1/4), 32 (Sec.), 22N (T.), 3E (R.), Indian (Mer.), Watchorn (Field).

The proposed work as stated on said notice is hereby approved subject to compliance with the provisions of the applicable Oil and Gas Operating Regulations and subject to the additional conditions as follows:

Bottom of the hole to be filled with heavy mud before the casing is parted and mud to be added as casing is pulled. No cement or other permanent cap is to be placed in the well at the surface until settling of the mud has ceased and any remaining space has been refilled with mud.

A subsequent report of abandonment (form 9-331b) in triplicate, stating the details of the work done and the date completed must be submitted.

Particular attention is directed to the requirements for lessees provided in Sections 221.18 to 221.56, inclusive of the Operating Regulations. Generally, records and written notices relating to well operations must be submitted in accordance with Sections 221.57 to 221.59, inclusive, of said Regulations. No change in the proposed operations as herein approved will be permitted unless acceptable notice of intention to change plans is submitted on Form 9-331b,

in Triplicate, and approval obtained before such work is commenced.

Very truly yours, (Signed) John A. Anderson, District Engineer.

JAA:MCB.

cc—Pawnee Indian Agency.  
Tulsa Office USGS.

Please notify this office of the date on which abandonment will be started in order that a representative may be present if circumstances permit.

[fol. 205]

EXHIBIT "C-1"

Pawnee, Oklahoma,  
November 2nd, 1943.

I, the undersigned, Superintendent of the Pawnee Indian Agency do hereby certify that the attached Trust Patent is a true and correct copy of such instrument as shown by the records of the Pawnee Indian Agency, Pawnee, Oklahoma.

\_\_\_\_\_, Superintendent, Pawnee Indian Agency,  
Pawnee, Oklahoma.

[fol. 206]

The United States of America

To All to Whom These Presents Shall Come, Greeting:

Whereas, There has been deposited in the General Land Office of the United States a schedule of allotments approved by the Secretary of the Interior January 17, 1907, whereby it appears that Rachel H. Robedaux an Indian of the Otoe and Missouri tribe or band has been allotted the following described land,

The South East quarter of Section thirty two, and the South West quarter of the South West quarter of Section thirty three in Township twenty three North of Range three East of Indian Meridian in Oklahoma, containing two hundred acres.

Now Know Ye, that the United States of America in consideration of the premises, has allotted, and by these presents does allot, unto the said Rachel H. Robedaux the land above described, and hereby declares that it does and will hold the land thus allotted (subject to all statutory provisions and restrictions) for the period of twenty-five years, in trust for the sole use and benefit of the said Indian, and that at the expiration of said period the United States will convey the same by patent to said Indian, in fee, discharged of said trust and free of all charge or incumbrance whatsoever, if the said Indian does not die before the expiration of the said trust period; but in the event said Indian does die before the expiration of that period this patent and the allotment upon which it is based shall be canceled, and the said land shall revert to the United States and be thereafter disposed of in the manner prescribed by law;

Provided, that the President of the United States may, in his discretion, extend said period.

In Testimony Whereof, I, Theodore Roosevelt, President of the United States of America, have caused these Letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this tenth day of June, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty first.

By the President, Theodore Roosevelt; by F. M. McKean, Secretary.

Recorded Vol. 616, p. 383. Miscellaneous. H. M. Canford, Recorder of the General Land Office.

[fol. 207]

EXHIBIT "C-2"

Pawnee, Oklahoma,  
November 2nd, 1943.

I, the undersigned, Superintendent of the Pawnee Indian Agency do hereby certify that the attached Approval of Heirship is a true and correct copy of such instrument as shown by the records of the Pawnee Indian Agency, successor to the Ponca Agency, Pawnee, Oklahoma.

\_\_\_\_\_, Superintendent, Pawnee Indian Agency,  
Successor to the Ponca Agency, Pawnee, Oklahoma.



[fol. 208] Probate 86159-24. R.W.B.

Department of the Interior, Office of Indian Affairs

Dec 8, 1924.

Ponca Agency, Oklahoma. Approval of heirship to Estate of Rachel Homoratha Robedeaux.

Respectfully submitted to the Secretary of the Interior recommending finding herewith, as in accordance with the laws of Oklahoma.

It appears from the evidence adduced at the hearing that Rachel Homoratha Robedeaux, deceased Otoe allottee #186, died April 28, 1924, at the age of 67 years, intestate, married, and with issue, leaving surviving as her only heirs, Felix Robedeaux, husband, and Horton Homoratha, son, entitled to inherit an interest of  $\frac{1}{2}$  each, under the laws of descent and distribution in force and effect in the State of Oklahoma at the time of allottee's death. It is therefore recommended that the heirs to allottee's estate be found as herein above indicated.

It appears that allottee was married twice; First, to John Homoratha, prior deceased, by Indian Custom, before allotments three children having resulted from the marriage, namely, James Homoratha and Mariah Homoratha, both of whom died when they were children, before the allottee, and Horton Homoratha, son, who is still living, and entitled to inherit as above set out. Second, to Felix Robedeaux, living, by Indian Custom in 1896, one child having resulted from the marriage, namely, Drosie Robedeaux, who died in infancy before the allottee.

It appears that allottee was originally allotted the  $E\frac{1}{2}$  of NW $\frac{1}{4}$  of Section 20, Township 23 N., Range 1 East, and the SE $\frac{1}{4}$  of Section 32, Township 23 N, Range 3 East I.M. Allotted under the Act of February 8, 1887 (24 Stat. 388), as amended by the Act of March 3, 1891 (26 Stat., 989), trust patent issuing therefor

Of the above described property the  $E\frac{1}{2}$  of NE $\frac{1}{4}$  of Section 20, Township 23 N, Range 1 East was sold prior to the death of the allottee (L.S. 62150-22), the W $\frac{1}{2}$  of the SE $\frac{1}{4}$  was deeded to Horton Homoratha October 4, 1922 (L.S. 62150-22) and the  $E\frac{1}{2}$  of the SE $\frac{1}{4}$  was deeded to Horton Homoratha (L.S. 12756-24). At the time of the death of the allottee it appears that he was possessed of no trust real estate.

It appears that allottee's personal property consists of \$1605.42, accrued from land sales and interest prior to her death, the same being deposited to the official credit of the Superintendent of Ponca Agency, Oklahoma, S.D.A.

No homestead rights exist. No will was executed. No inherited interests. Total appraised value of entire trust estate \$1605.42

Respectfully, (Signed) E. B. Meritt, Assistant Commissioner.

MR-11-22-24.

[fol. 209] Probate 86159-24. R.W.B.

Department of the Interior

Ponca Agency, Oklahoma. Approval of heirship to Estate of Rachel Homoratha Robedeaux;

Dec-9, 1924.

The proceedings in the matter of the heirship to the estate of Rachel Homoratha Robedeaux deceased Allottee No. 186, of the Otoe Tribe, are hereby approved according to the Act of June 25, 1910 (36 Stat. L., 855); as amended by Act of February 14, 1913 (37 Stat. L., 678), and the Regulations of the Department, and I find and adjudge that at the date of the hearing held October 15, 1924, the heir to the estate of the decedent and their respective shares were as follows;

Felix Robedeaux, husband

1/2

Horton Homoratha, son

1/2

It is found that allottee's personal property consists of \$1605.42, accrued from land sales and interest prior to her death, the same being deposited to the official credit of the superintendent of Ponca Agency, Oklahoma, S.D.A.

No inherited interests appear.

No homestead rights exist.

No will was executed.

Total appraised value of entire trust estate \$1605.42.

A fee of \$25.00 is to be collected by the Superintendent of Ponca Agency, Oklahoma, under the act of January 24, 1923, (42 Stat. L. 1174-1185).

(Signed) F. M. Goodwin, Assistant Secretary.

## EXHIBIT "C-3"

Pawnee, Oklahoma, November 2nd, 19—.

I, the undersigned, superintendent of the Pawnee Indian Agency do hereby certify that the attached

## Deed Noncompetent Indian Lands

is a true and correct copy of such instrument as shown by the records of the Pawnee Indian Agency, Pawnee, Oklahoma.

\_\_\_\_\_, Superintendent, Pawnee Indian Agency, Pawnee, Oklahoma.

[fol. 211] Office of Indian Affairs. Received Feb. 16, 1924  
12756

5-183a

## Deed Noncompetent Indian Lands

This Indenture, Made and entered into this 31st day of January one thousand nine hundred and 24, by and between Rachel H. Robedeaux, wife and Felix Robedeaux, husband of Red Rock, Oklahoma, noncompetent Osbe and Missouria Indian, parties of the first part, and Horton Homoratha of Red Rock, Oklahoma party of the second part:

Witnesseth, That said parties of the first part, for and in consideration of the sum of One dollar (\$1.00) dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto said party of the second part the following-described real estate and premises situated in Pawnee County, State of Oklahoma, to wit: E/2 of the SE/4 of 32-23N-3E.1 M. containing 80 acres, more or less according to Government survey.

Subject to the condition that while the title is in the grantee or heirs, the land herein described shall not be alienated or incumbered without the consent of the Secretary of the Interior.

The Grantor reserves the right to use all rents, profits, minerals especially oil and gas, during her life from the land conveyed herein together with all the improvements thereon and the appurtenances thereunto belonging. And the said parties of the first part, for themselves and their heirs, executors, and administrators, do hereby covenant,



promise, and agree to and with the said party of the second part, his heirs and assigns, that he will forever warrant and defend the said premises against the claim of all persons, claiming or to claim by, through, or under him only.

To have and to hold said described premises unto the said party of the second part, his heirs, executors, administrators, and assigns, forever.

In Witness Whereof, The said parties of the first part have hereunto set their hand and seals the day and year first-above written.

Rachel H. Robedeaux (Her Thumb Mark). (Seal.)

Felix Robedeaux (His Thumb Mark). (Seal.)

Witnesses: Frank Shadlow, Morgan Fawfaw.

[fol. 212] Indexed. 49233. Noncompetent Indian Deed from Rachel H. Robedeaux to Horton Homorathia. State of Oklahoma, Pawnee County, ss. This instrument was filed for record on the 27 day of Mar., 1924 at 1:30 o'clock P. M., and duly recorded in Book 45 Deeds, on page 137. Maude C. Nelson, County Clerk, Register of Deeds. Mabel Riseling, Deputy. (Seal.) 1.25.

Proof Read. Otoe 185. Department of the Interior, Office of Indian Affairs. Mar. 1, 1924. The within deed is respectfully submitted to the Secretary of the Interior, with the recommendation that it be approved. C. F. Hawke, Chief Clerk. Department of the Interior. Mar. 6, 1924. The within deed is hereby approved. F. M. Goodwin, Assistant Secretary. Office of Indian Affairs, Land Division. Mch. 8, 1924. Recorded in Deed Book, Inherited Indian Lands, Vol. 47, page 41. MMS.

#### Acknowledgement—By Mark

THE STATE OF OKLAHOMA

Noble County, ss:

Before me R. Schultz a Notary Public, in and for said County and State, on this 31st day of January 1924, personally appeared Rachel H. Robedeaux and Felix Robedeaux, her husband, to me known to be the identical persons who executed the within and foregoing instrument by thumb mark, and in my presence and in the presence of Frank Shadlow and Morgan Fawfaw as witnesses, and acknowledged to me that they executed the same as their free and

voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and Notarial seal, the day and year above set forth.

R. Schultz, Notary Public, Noble County, Okla. My Commission expires October 25, 1924. (Seal.)

[fol. 213]

EXHIBIT "C-4"

Pawnee, Oklahoma,  
November 2nd, 1945.

I, the undersigned, Superintendent of the Pawnee Indian Agency do hereby certify that the attached Deed Non-competent Indian Lands is a true and correct copy of such instrument as shown by the records of the Pawnee Indian Agency, Pawnee, Oklahoma.

— — —, Superintendent, Pawnee Indian Agency,  
Pawnee, Oklahoma.

[fol. 214] Office of Indian Affairs. Received Sep. 26, 1922. 76839.

Office of Indian Affairs. Received Aug. 2, 1922. 62150.

5-183-a

### Deed Noncompetent Indian Lands

This Indenture, Made and entered into this 4th day of October one thousand nine hundred and 21, by and between Rache H. Robedeaux, wife, and Felix Robedeaux, husband, of Red Rock, Oklahoma, noncompetent Otoe and Missouria Indian, parties of the first part, and Horton Homorathá of Red Rock, Oklahoma, party of the second part:

Witnesseth, That said parties of the first part, for and in consideration of the sum of One dollars (\$1.00) dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto said party of the second part the following described real estate and premises situated in Pawnee County, State of Oklahoma, to wit: W/2 of the SE/4 of 32-23N-3E.I.M. containing 80 acres, more or less, according to Government survey. Subject to the condition that while the title is in the grantee or

heirs, the land herein described shall not — alienated or incumbered without the consent of the Secretary of the Interior. The grantor reserves the right to use all rents, profits, minerals, especially oil and gas, during her life from the land conveyed herein together with all the improvements thereon and the appurtenances thereunto belonging. And the said parties of the first part, for themselves and their heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that they will forever warrant and defend the said premises against the claim of all persons, claiming or to claim by, through, or under them only.

To have and to hold said described premises unto the said party of the second part, his heirs, executors, administrators, and assigns, forever.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Rachel H. Robedeaux (her thumb mark). (Seal.)

Felix Robedeaux (his thumb mark). (Seal.)

Witnesses: Lizzie Homoratha, Edna Tearney.

[fol. 215] Acknowledgments must be in accordance with the forms prescribed by the State in which the land is situated.

STATE OF OKLAHOMA,

County of Noble, ss:

Be It Remembered, that on this 4th day of October, A. D. 1921 before the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Rachel H. Robedeaux and Felix Robedeaux to me personally known to be the identical persons who executed the within instrument of writing, and by their mark, and in my presence and in the presence of Lizzie Homoratha and Edna Tearney and such persons duly acknowledged the execution of the same, as their free and voluntary act and deed for the uses and purposes herein set forth.

In Testimony Whereof, I have hereunto subscribed my name and affixed my notarial seal on the day and year last above written.

R. Schultz, Notary Public. (Seal.)

My commission expires Oct. 25, 1924.



Indexed 43863

Noncompetent Indian Deed from Rachel H. Robedeaux  
et. al. to Horton Homoratha.

STATE OF OKLAHOMA,  
Pawnee County, ss:

This instrument was filed for record on the 8 day of Nov.,  
1922, at 9 o'clock A. M., and duly recorded in Book 42 DR,  
on page 405.

Maudie C. Nelson, County Clerk. Mabel Riseling,  
Deputy. (Seal.)

1.25.

Proofread

Department of the Interior, Office of Indian Affairs

Oct. 2, 1922.

The within deed is respectfully submitted to the Secretary of the Interior, with the recommendation that it be approved.

C. F. Hawke, Chief Clerk. W.

Department of the Interior

Oct. 7, 1922.

The within deed is hereby approved.

F. M. Goodwin, Assistant Secretary.

Office of Indian Affairs, Land Division

Oct. 17, 1922.

Recorded in Deed Book, Inherited Indian Lands, Vol. 43,  
page 247.  
MMS.

[fol. 216]

EXHIBIT "C"

3630 Patent

Filed for record Oct. 19, 1939 at 9:30 A. M. (Recorded in Book 88 of Deeds, Page 191) Eddie Cole, County Clerk. (Seal.)

The United States of America, to the Heirs of Mary Molino:

1777598. 32382-39 I. O. 943 & 942

THE UNITED STATES OF AMERICA

To All to Whom These Presents Shall Come, Greeting:

Whereas, an Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to the claimants, the heirs of Mary Moleno, devisee of Moleno, heir of Wau-co-chah and Klad-ah-ing (Black Apache) Apache Indians, for an undivided one-fourth interest in and to the east half of the northeast quarter of Section eight, the west half of the Northwest quarter of Section nine, the west half of the southwest quarter of Section three, and the north half of the northwest quarter of Section ten in Township five north of Range nine west of the Indian Meridian, Oklahoma, excepting from the effect of this conveyance however, that certain parcel of ground containing twelve acres and nineteen hundredths of an acre, in the west half of the southwest quarter of said Section three, heretofore conveyed to the St. Louis-San Francisco Railway Company, by deed approved March 3, 1930, and recorded in Indian Office Deed Book, Volume 58 at page 63 and also, that certain parcel of ground containing eight acres and thirteen hundredths of an acre in the northwest quarter of the southwest quarter of said Section three, heretofore conveyed to the Magnolia Petroleum Company, with mineral rights reserved, by deed approved [fol. 217] July 31, 1930, and recorded in the Indian Office Deed Book, Volume 59 at page 85 in the Office of the Commissioner of Indian Affairs, containing, after making the exceptions above specified, two hundred ninety-nine acres and sixty-eight hundredths of an acre:

Now Know Ye, That the United States of America, in consideration of the premises, has given and granted and

by these presents does give, and grant, unto the said claimants and to the heirs of the said claimants, an undivided one-fourth interest in the Land above described; to Have and To Hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimants and to the heirs and assigns of the said claimants forever.

In Testimony Whereof, I, Franklin D. Roosevelt, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the Twenty-fifth day of September, in the year of our Lord One thousand nine hundred and thirty-nine and of the Independence of the United States the One hundred and sixty-fourth.

By the President, Franklin D. Roosevelt, by Jeanne Kavanagh, Secretary. R. S. Clinton, Acting Recorder of the General Land Office. (Seal.)

Recorded: Patent Number 1105386.

[fol. 218] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 219] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED ON—Filed April 10, 1948

In this appeal the appellant, Oklahoma Tax Commission, states that it intends to rely on the following enumerated points:

1. The taxes imposed and by appellee protested are: (1) A nondiscriminatory gross production tax in an amount equal to five per centum of the gross value of the oil, gas, and casinghead gas produced, but not to exceed what otherwise would be the rate for ad valorem purposes if subjected to that tax, the tax being levied in lieu of all other taxes on the oil, gas, casinghead gas and all appliances, tools and



machinery directly used and employed in the production; (2). A nondiscriminatory excise tax, up to July 1, 1943, of  $\frac{1}{8}$  of 1¢ per barrel on all oil produced and thereafter the same character of tax of one mill per barrel on all oil produced.

(a) The properties from which the oil and gas was produced lie wholly within the State of Oklahoma and all acts necessary in producing the oil, gas and casinghead gas were performed in Oklahoma.

(b) The validity and constitutionality of the statutes under which the taxes were imposed have been sustained by the Supreme Court of Oklahoma. In denying the State [fol. 220] of Oklahoma its inherent sovereign right to impose and collect the taxes above referred to, on the oil, gas and casinghead gas produced and accruing to the  $\frac{7}{8}$  working interest of appellee under the departmental leases covering the lands of restricted Indians, including among which lands are lands in which non-Indians owned an undivided interest in the  $\frac{1}{8}$  royalty interest, the Supreme Court of Oklahoma has violated the inherent sovereign and constitutional rights of the State of Oklahoma as one of the sovereign states of the Union to levy and collect taxes on subjects wholly within her jurisdiction.

2. The United States had and held no right, title, interest or ownership in and to the  $\frac{7}{8}$  working interest held and owned by appellee or in and to the production accruing to said interest. Therefore, an imposing of the taxes in controversy did not constitute a taxing of properties of the United States.

3. An imposing of the tax will not burden or effect the property rights of any restricted Indian and his accruals from the oil, gas and casinghead gas produced will neither be lessened nor diminished.

4. The fact that appellee operated and produced oil and gas under departmental leases from wells located on the lands of restricted Indians, did not make and constitute it a United States agency or a federal instrumentality. The appellee was a private corporation and its business of operating and producing the oil, gas and casinghead gas was a private business.

5. An imposing of the taxes in controversy will not directly burden, interfere with or hinder the United States Government in carrying out its supervisory functions in [fol. 221] connection with the properties of any restricted Indian. The effect of imposing the tax, if any, is indirect, inconsequential and remote.

6. An imposing of the tax will not deprive the appellee of the power to serve the United States Government as it was intended that it should serve, or hinder or deter it in so serving.

7. Non-Indians owned a fractional interest and part of the  $\frac{1}{8}$  royalty interest. The production accruing to those interests and the relationship that those interests bore toward the appellee had no possible connection with any theory of federal instrumentality or federal agency.

Joe M. Whitaker, R. F. Barry, Attorneys for Appellants.

[fol. 222] Acknowledgment of Service

Personal service of a true and correct copy of the foregoing motion, entitled "Statement of Points to be Relied on," is acknowledged to have been made on me this 7 day of April, 1948.

Robert W. Richards, Wendell J. Doggett, Attorneys for Appellee

[fol. 223] IN THE SUPREME COURT OF THE UNITED STATES

DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—  
Filed April 10, 1948

The Oklahoma Tax Commission, appellant in the above styled and numbered cause, respectfully requests that all portions of the record heretofore filed herein be printed, omitting only those portions thereof that it is provided in sub-section 9 of Rule No. 13 of the above named court, may be omitted.

Joe M. Whitaker, R. F. Barry, Attorneys for Oklahoma Tax Commission

[fol. 224] Acknowledgment of Service

Personal service of a true and correct copy of the foregoing motion, entitled "Designation of the Parts of the Record to be Printed," is acknowledged to have been made on me this — day of April, 1948.

Robert W. Richards, Wendell J. Doggett, Attorneys  
for Appellee

[fol. 224a] [File endorsement omitted]

[fol. 225] SUPREME COURT OF THE UNITED STATES

[Title omitted]

Appeal from the Supreme Court of the State of Oklahoma.

ORDER DISMISSING APPEAL AND GRANTING APPLICATION FOR  
WRIT OF CERTIORARI—April 19, 1948

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of Oklahoma, and was duly submitted.

On consideration whereof, It is now here ordered by this Court that the appeal herein be, and the same is hereby, dismissed for the want of jurisdiction.

Treating the appeal papers herein ~~from~~ the Supreme Court of the State of Oklahoma as an application for a writ of certiorari;

On consideration whereof, It is ordered by this Court that the said application for writ of certiorari be, and it is hereby, granted. The case is consolidated with No. 703 for argument. The Solicitor General is requested to file a brief as *amicus curiae*.

Endorsed on cover: File No. 52,934 Oklahoma, Supreme Court, Term No. 704. Oklahoma Tax Commission, Appellant, Petitioner vs. Magnolia Petroleum Company. Filed March 30, 1948. Term No. 704 O.T. 1947.